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ABSTRACT

The document contains hearings on the Education for All Handicapped Children Act (P.L. 94-142) to amend the existing funding formula to devise a special allowance for high cost areas. Among the testimony offered are statements from the following individuals: S. Davis, state superintendent of public instruction of Virginia, on areas of the law needing revision; P. Hepner of Advocates for Children, an organization of parents and citizens interested in the rights of all children to appropriate educational services in New York City; A. Berman, Senator from Illinois; G. Hoffman, State Representative from Illinois; C. des Jardins, director of the Coordinating Council for Handicapped Children, a coalition of more than 100 parents and professional organizations in the Chicago area; J. First of the Illinois-Indiana Race Desegregation Assistance Center; R. DeWitt, president of the Colorado Association for Children and Adults with Learning Disabilities; B. Bernstein, executive director of the Legal Center for Handicapped Citizens; R. Dawson, superintendent of the Colorado School for the Deaf and Blind; R. Werner, Jr., director of special education of the Missouri Department of Elementary and Secondary Education; R. Waier, superintendent of North Kansas City (Missouri) Schools; T. O'Donnell, attorney at law; C. Clark, president of the Missouri Association for Children with Learning Disabilities, on parent perspectives of problems relating to P.L. 94-142; C. Moore, parent of a physically and mentally handicapped child; B. Ladd, president of the Parents' Campaign for Handicapped Children and Youth, presenting a report from Closer Look; R. Barber, director of the Children's Defense Fund (Mississippi office); and F. Weintraub, assistant director for government relations of The Council for Exceptional Children. Appended are materials including a position paper on corrective therapy services to handicapped children, sample letters, and an Educational Resource Information Center (ERIC) Report paper titled "Nineteen Steps for Assuring Nonbiased Placement of Students in Special Education" by J. Tucker. (SB)

ED213154

FIELD HEARINGS ON THE EDUCATION FOR ALL HANDICAPPED CHILDREN ACT

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HEARINGS

BEFORE THE

SUBCOMMITTEE ON SELECT EDUCATION

OF THE

COMMITTEE ON EDUCATION AND LABOR
HOUSE OF REPRESENTATIVES

NINETY-SIXTH CONGRESS

SECOND SESSION

HEARINGS HELD IN NEW YORK, N.Y., ON MAY 9; CHICAGO, ILL., ON JUNE 6; AURORA, COLO., ON JUNE 27; KANSAS CITY, MO., ON SEPTEMBER 22; WASHINGTON, D.C., ON NOVEMBER 19 AND 20, 1980

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FIELD HEARINGS ON THE EDUCATION FOR ALL HANDICAPPED CHILDREN ACT

FRIDAY, MAY 9, 1980

House of Representatives,
Subcommittee on Select Education,
Committee on Education and Labor,
New York, N.Y.

The subcommittee met, pursuant to notice, at 9:20 a.m., in room 305–C, Federal Plaza, Hon. Paul Simon (chairman of the subcommittee) presiding.

Members present: Representatives Simon, Biaggi, and Weiss.

Staff present: Judith Wagner, staff director; Thomas Birch, counsel; Jane Baird, research assistant: William Clohan, minority assistant education counsel; Jennifer Vance, minority legislative associate.

Mr. Biaggi. Mr. Simon, our chairman, who is no stranger to New York, however, did not take into consideration the heavy traffic en route from his hotel. He will be with us momentarily. In light of our concern for completing these hearings this morning, we will proceed, and I will chair until he arrives with my colleague, Mr. Weiss from New York.

I intended to welcome Mr. Simon, but will welcome him in absentia to my home city as our Subcommittee on Select Education conducts a very important oversight hearing on Public Law 94–142, the Education for All Handicapped Children Act. It is a part of a series of hearings which this subcommittee has been conducting all over the Nation.

We conduct this hearing replete with the knowledge that Public Law 94–142 is a troubled program, especially in this city. When President Ford signed the act into law on November 29, 1975, this action symbolized the completion of a commitment made by Congress to the handicapped children of our Nation.

This commitment is best described in the stated objectives of the bill:

Guarantee special education to all handicapped children and youth who need it;

Assure fairness in decisionmaking regarding the provision of special education;

Establish clear management and auditing requirements and procedures regarding special education at all levels of government; and

Financially assist State and local governments with Federal funds in their efforts to provide special education.

Now, almost 5 years later, we find ourselves still groping to achieve the lofty mandates of the act. What has inhibited us in this effort?

First we must examine the funding picture nationally—and in New York. Public Law 94–142, despite the persistent efforts of this subcommittee, the impact is felt more severely in this great city than in most other regions of the United States. Let me illustrate.

The act calls for a Federal commitment which would absorb increasing percentages of the costs involved in providing an education from 5 percent to 40 percent by 1982. Yet the highest percentage the Federal Government has ever provided has been 12 percent. In New York City it costs almost $9,000 to educate a handicapped child. It was hoped that the Federal commitment would cover at least one-third of that cost. It has not. The city is strapped with still another fiscal burden it cannot assume, and the impact has been incomplete services to handicapped children.

Underfunding of education programs is not new to New York City. In my 10 years in Congress, I have probably been involved in more formula fights over education than anything else. The pattern is consistent—New York gets shortchanged.

We have made major progress in elementary and secondary education. Similarly we should do the same with handicapped education.

I propose, therefore, legislation which would amend the existing Public Law 94–142 formula to devise a special allowance for high cost areas. This is absolutely critical if we are to help make up for past shortcomings while expanding our commitment to the handicapped child. We are not looking for a windfall, but rather for our fair share based on actual costs of providing an education.

Our commitment to the handicapped must not waiver even in the face of renewed budgetary pressures. For too long, the handicapped of this Nation were ignored, incarcerated by their second class status. Public Law 94–142 was a breakthrough, a triumph. It reflected a new commitment. The objectives now are as valid and necessary as they were then. Yet the world of 1980 is far different than the world of 1975. We must be cognizant of this fact and tailor our Federal programs accordingly.

We approach this hearing as advocates of Public Law 94–142. Yet, we do not pledge blind allegiance. We are aware of present day realities and have solicited the views of a wide segment of city and State witnesses to detail concerns endemic to this area. We are anxious to hear their views.

[The opening remarks of Congressman Mario Biaggi follow:]

OPENING STATEMENT OF HON. MARIO BIAGGI, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

I welcome my colleagues Mr. Simon and Mr. Erdahl to my home city of New York as our Subcommittee on Select Education conducts a very important oversight hearing on Public Law 94–142, the Education for All Handicapped Children Act. It is a part of a series of hearings which this subcommittee has been conducting all over the nation.

We conduct this hearing replete with the knowledge that Public Law 94–142 is a troubled program, especially in this city. When President Ford signed the act into law on November 29, 1975, this action symbolized the completion of a commitment made by Congress to the handicapped children of this nation.

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Now, almost 5 years later, we find ourselves still groping to achieve the lofty mandates of the act. What has inhibited us in this effort?

First, we must examine the funding picture nationally—and in New York. Public Law 94–142, despite the persistent efforts of this subcommittee, has suffered from underfunding almost from its inception. The negative impact is felt more severely in this great city than in most other regions of the United States. Let me illustrate.

The act calls for a Federal commitment which would absorb increasing percentages of the costs involved in providing an education—from 5 to 40 percent by 1982. Yet the highest percentage the Federal Government has ever provided has been 12 percent. In New York City it costs almost $9,000 to educate a handicapped child. It was hoped that the Federal commitment would cover at least one third of that cost. It has not. The city is strapped with still another fiscal burden it cannot assume and the impact has been incomplete services to handicapped children.

Underfunding of education programs is not new to New York City. In my 10 years in Congress, I have probably been involved in more formula fights over education than anything else. The pattern is consistent—New York gets shortchanged. We have made major progress in elementary and secondary education. Similarly, we should do the same with handicapped education.

I propose therefore, legislation which would amend the existing Public Law 94–142 formula to devise a special allowance for high cost areas. This is absolutely critical if we are to help make up for past shortcomings while expanding our commitment to the handicapped child. We are not looking for a windfall—but rather our fair share based on actual costs of providing an education.

Our commitment to the handicapped must not waiver even in the face of renewed budgetary pressures. For too long, the handicapped of this nation were ignored—incarcerated by their second class status. Public Law 94–142 was a breakthrough—a triumph. It reflected a new commitment. The objectives now are as valid and necessary as they were then. Yet the world of 1980 is far different than the world of 1975. We must be cognizant of this fact and tailor our federal programs accordingly.

We approach this hearing as advocates of Public Law 94–142. Yet, we do not pledge blind allegiance. We are aware of present day realities and have solicited the views of a wide segment of city and State witnesses to detail concerns endemic to this area. We are anxious to hear your views.

Mr. BIAGGI. Mr. Weiss?

Mr. WEISS. Thank you very much, Mr. Biaggi.

I, too, want to express my appreciation from the outset to you and to Chairman Simon of the Subcommittee on Select Education for convening these hearings in New York City. Mr. Simon, as a former Lieutenant Governor of the very large State of Illinois, is very much familiar with the impact of Federal programs' failure to enhance the capacity of States and localities to meet the obligations that in many instances are mandated upon them.

Today's hearing is part of the effort to insure input from across the country, to insure that we know how our failure to meet those commitments is affecting the lives of people throughout this country.

Although I am not a member of the subcommittee itself, I am pleased to have the opportunity to participate for most of the morning. However, I will have to leave at 11 o'clock because I have other obligations.

Mr. BIAGGI. The first panel consists of Mr. Edward Burke, assistant director, New York City Office of Management and Budget: and Mr. James Brenner, assistant director, New York City Office of Management and Budget.

[Prepared statement of James Brenner follows:]

PREPARED STATEMENT OF JAMES BRENNER, ASSISTANT DIRECTOR, NEW YORK CITY OFFICE OF MANAGEMENT AND BUDGET

Chairman Simon, Congressman Biaggi, members of the Subcommittee on Select Education, on behalf of Mayor Edward Koch and the City's Budget Director, James R. Brigham, Jr., I would like to express our appreciation for the opportunity to testify before this distinguished subcommittee.

This past January, Mayor Koch released a study of forty-seven federal and state mandates, whose costs, over the next four years, require outlays of $6.25 billion in expense budget items, $1.66 billion in revenue losses and $711 million in capital costs.

Today, the Mayor is presenting the fiscal 1981 Executive Budget to the City Council and the Board of Estimate. It is the first truly balanced budget in more than a decade. While the 1978, 1979 and 1980 budgets were balanced, they were balanced in accordance with statutory requirements and not in accordance with generally accepted accounting principles (GAAP). Statutory balance permitted a phase-out of capitalized expenses and did not require accrual of pension liabilities. While the City had statutory surpluses in 1978 and 1979 as well as an anticipated surplus in 1980, the budget would not have been in true balance if generally accepted accounting principles had been applied. The City has reduced its deficit from $1,870 million in 1976 to zero in 1981. Despite this, the City faces a continued period of fiscal restraint. The projected deficit for 1982 is $469 million. It is in this context that we would like to discuss the special education mandate.

The Education for All Handicapped Children Act, 20 U.S.C.A. section 1401 et seq. has required a substantial increase in local expenditures to meet the standards as set forth in the Act and the appropriate Regulations.

The Act is a landmark in assuring equal opportunity of education. It strives to return to the mainstream the millions of handicapped children who were disabled, not so much by their handicaps, but by the obstacles that prevented their participation in public education.

This mandate, however laudable, is not without its costs. It is much more costly to provide an appropriate education for handicapped students due to their special needs. Moreover, as a result of these legislative mandates, the number of handicapped children provided special education in New York has more than doubled since 1971, and has increased by 68 percent since 1975. Providing education for these children has put a severe strain on the City's resources. When Public Law 94–142 was passed in 1975, the City was faced with bankruptcy. In that year over $190 million was budgeted for educating handicapped children. In 1981, over $500 million will be spent on education and transportation for an estimated 93,000 handicapped children.

In 1981, the city will spend $299 million just on instructional programs for the handicapped, exclusive of any Federal support. The Special Education budget alone is larger than every mayoral agency budget with the exception of Police, Fire, Human Resources and General Services. The increase in spending for Special Education between 1980 and 1981 amounts to $83 million. This increase exceeds the sum total of increases to the budgets of the Police, Fire, Sanitation, Social Services, Corrections, Parks and Human Resources between 1980 and 1981. When transportation and other costs are included, Special Education spending will exceed the budget of every City agency except Social Services in 1981.

Unfortunately, the support of the Congress for the extraordinary costs of the programs it mandates has not kept pace with these costs.

The Education for All Handicapped Children Act authorized Congress to appropriate up to 40 percent of the average nationwide per pupil expenditure. Not only has the percentage appropriated (12 percent) fallen below the authorized level, but the average nation-wide per pupil expenditure in an inadequate measure of costs.

While fiscal year 1980 appropriations provided $160 per handicapped pupil, the City spent over $6,600 per pupil for Special Education. Clearly the burden imposed on the City far outstrips the federal reimbursement of slightly more than $8 million.

New York City has a higher concentration of handicapped students than any other city. While Philadelphia, for example, serves over 12 percent of public school students in specialized programs, New York City serves nearly twice as many handicapped children in full time programs and nearly three times as many handicapped pupils overall.

We propose that this Committee consider several changes to the current statute:

(1) Average per pupil expenditures should be regionally adjusted to reflect varying educational costs throughout the nation (e.g., $1,400 vs. over $2,700 in New York).

(2) The percentage of per pupil expenditures used in the entitlement formula should be adjusted to reflect the excess cost of educating handicapped children in local districts. In New York, the excess cost of educating handicapped children is over three times the expenditure for non-handicapped students.

(3) The allocation formula should be revised to provide areas that have high concentrations of handicapped students with targeted allocations.

(4) The Committee should take a careful look at the Regulations to determine whether or not they are overly restrictive.

Thank you again for the opportunity to appear here today. My colleagues and I are prepared to answer your questions.

STATEMENT OF JAMES BRENNER, ASSISTANT DIRECTOR, NEW YORK CITY OFFICE OF MANAGEMENT AND BUDGET

Mr. BRENNER. Thank you, Mr. Biaggi.

I would like to introduce those accompanying me this morning. The gentleman on my left is John Masten, who is deputy assistant budget director; and to his left is Rick Jacobs of the Office of Management and Budget. Mr. Burke, unfortunately, is at city hall presenting the budget message.

Congressman Biaggi and Congressman Weiss: On behalf of the mayor and the city's budget director, I would like to express our appreciation for the opportunity to testify before this distinguished subcommittee. We have a statement which we have submitted for the record. I would like to read excerpts from it, and then address any questions that you would have.

Last January, the mayor released a study of 47 Federal and State mandates whose costs over the next 4 years require outlays of $6.25 billion in expense budget items, and $1.66 billion in revenue losses, along with $711 million in capital costs.

Today, the mayor is presenting the fiscal 1981 executive budget to the city council and the board of estimate. It is the first truly balanced budget that the city has submitted in over a decade. While the 1978, 1979, and 1980 budgets were balanced, they were balanced in accordance with statutory requirements and not in accordance with generally accepted accounting principles. Statutory balance permitted a phase-out of capitalized expenses and did not require accrual of pension liabilities.

While the city had statutory surpluses in 1978 and 1979 as well as an anticipated surplus this year, if you applied generally accepted accounting principles, the budget would have been in deficit. Since 1975, we have reduced the city's budget deficit from $1.8 million to a projection of zero in 1981.

Despite this accomplishment, the city faces a continued period of fiscal restraint. We have followed closely the budget process in the Congress, and there is no question that aid to New York City is going to fall next year. It is in this context that we would like to discuss the special education mandate.

The Education for All Handicapped Children Act has required a substantial increase in local expenditures to meet the standards set forth in the act and the appropriate regulations. The act is a landmark in assuring equal opportunity of education. It strives to return to the mainstream the millions of handicapped children who were disabled, not so much by their handicaps, but by the obstacles that prevented their participation in public education.

This mandate, however laudable, is not without its costs. It is much more costly to provide an appropriate education for handicapped students due to their special needs. Moreover, as a result of these legislative mandates, the number of handicapped children provided special education in New York has more than doubled since 1971, and has increased by 68 percent since 1975. Providing education for these children has put a severe strain on the city's resources.

When Public Law 94-142 was passed in 1975, the city was faced with bankruptcy. In that year over $190 million was budgeted for educating handicapped children. In 1981, over $500 million will be spent on education and transportation for the estimated 93,000 handicapped children.

In the future fiscal year, the city will spend $299 million just on instructional programs for the handicapped, exclusive of any Federal support. The special education budget alone is larger than every mayoral agency budget with the exception of police, fire, human resources, and general services.

The increase in spending for special education between 1980 and 1981 amounts to $83 million. This increase exceeds the sum total of increases to the budgets of the police, fire, sanitation, social services, corrections, parks, and human resources between 1980 and 1981. When transportation and other costs are included, special education spending will exceed the budget of every city agency except social services in 1981.

Unfortunately, the support of Congress for the extraordinary costs of the programs it mandates has not kept pace with these costs. I think, Congressman Biaggi, you eloquently summarized that in your opening statement.

The Education for All Handicapped Children Act authorized Congress to appropriate up to 40 percent of the average nationwide per pupil expenditure. As you pointed out, the expenditure has been around 12 percent.

While fiscal year 1980 appropriations provided $160 per handicapped pupil, the city spent over $6,600 per pupil for special education. Clearly, the burden imposed on the city far outstrips the Federal reimbursement of slightly more than $8 million.

New York City has a higher concentration of handicapped students than any other city. While Philadelphia, for example, serves over 12 percent of public school students in specialized programs, New York City serves nearly twice as many handicapped children in full-time programs and nearly three times as many handicapped pupils overall.

We propose that this committee consider several changes to the current statute:

One: Average per pupil expenditures should be regionally adjusted to reflect varying educational costs throughout the Nation: for example, the national average of $1,400 against the average of $2,700 in New York.

Two: The percentage of per pupil expenditures used in the entitlement formula should be adjusted to reflect the excess cost of educating handicapped children in local districts. In New York, the excess cost of educating handicapped children is over three times the expenditure for nonhandicapped students.

Three: The allocation formula should be revised to provide areas that have high concentrations of handicapped students with targeted allocations.

Four: The committee should take a careful look at the regulations to determine whether or not they are overly restrictive.

We have approached purely on fiscal impact from the OMB standpoint. I think we have presented a case to show that the city has made a valiant effort in providing funds at the cost of other programs, and we have tried to meet the mandates. We need help.

We would like to answer any questions that you might have.

Mr. **Simon**. I have just arrived. My apology for not being here. Let me yield to my colleague, Mr. Biaggi.

Let me say as the chairman of the subcommittee, my deep appreciation for having the opportunity to serve with Mr. Biaggi, who is a member of our subcommittee and a member of the full committee, and Mr. Weiss, who is not a member of the subcommittee but a very valued member of the full committee. I appreciate their presence.

I yield first to Mr. Biaggi.

Mr. **Biaggi**. Thank you, Mr. Chairman.

Mr. Brenner, your statement reveals very clearly that the mayor and the administration are sensitized and responsive to the needs of the handicapped children in education, especially in relation to the increases. That is a remarkable demonstration of good faith and concern.

We know the problems that exist are not really of the city's making. We know the mandates are something else, but the mayor was part of our whole process.

Mr. **Brenner**. As he is painfully aware.

Mr. **Biaggi**. He, like so many of us, was concerned with the needs of the people of our country and, in fact, supported, fought for, and was gratified at the enactment of legislation which provided mandates.

I think that there will have to be a review of that entire policy. Mandating is one thing, but with that mandate, you have to accommodate the responsibility of funding.

How much money would be necessary to educate the total handicapped population? How much money would the city require to educate the total handicapped population?

Mr. **Masten**. The total expenditures that are planned for 1981 are approximately $300 million. That represents educating approximately 10 percent of the public system's enrollment in special education programs. We are trying, working with the Board of Education, to project what the total eventual enrollment in special education will be. Whether it will approach the normal figure of 12 percent of the entire school age population of this city, or whether it will level out roughly at the level that we budgeted for next year, we are not clear at this point and we will obviously be monitoring referral rates, and so on, which in the past have admittedly been catching up with the situation in which large numbers of handicapped children were not in fact placed on a timely basis and were, in fact, denied access to special education.

In that context, it is hard to give a specific figure as to what the total eventual cost of special education would be, but I think if we were to project, perhaps, another 30 percent increase in the special education budget, assuming the enrollment were to move up into the region of 12 percent of the school age population in the city, that might be bringing us up in the region of $400 million in current dollars. This is simply the best estimate that I can give you.

Mr. Biaggi. In relation to the estimate, as you stated, you are dealing with the board of education.

It would be helpful to the committee, Mr. Chairman, if you could arrive at a figure in relation to the moneys needed.

Mr. Masten. We would be happy to develop those figures for you. This is the best we can do at the moment.

Mr. Biaggi. That would be critical. At least we would have a more accurate picture of what is needed.

Mr. Masten. What I want to stress is that we obviously are in a period of great growth in this program, and how close we are to the end of the expansion we are not clear, to be honest.

Mr. Biaggi. One of the purposes of the hearing is so that we can talk to our conferees and portray an accurate picture.

Some of your suggestions are excellent, really. I don't know how successful we will be in having them adopted, but at least they are avenues to resolution. What we have to do is to reinforce with figures because I am sure other members of the committee will be asking these very same questions. To respond in an inaccurate fashion or in an uncertain fashion will hardly help the cause.

Mr. Brenner. Our current enrollment is about 65,000 and we project to go into 93,000 in the next fiscal year. We will try to work with the board to provide you with a relatively reasonable estimate on what that outward boundary is.

Mr. Biaggi. Mr. Brenner, on page 2 of your statement you make reference to the obstacles to participation. What are they?

Mr. Brenner. Some of the obstacles are just transportation, architectural barriers, not so much the child himself, but his mobility.

Mr. Biaggi. I was one of the authors of the initial legislation in relation to architectural barriers and accessibility to handicapped, education for all, and transportation for all. It is my amendment that established that national policy to provide accessibility to the elderly and the handicapped, but it was never without contemplation to provide redundant systems, or to provide a similar amount of access for nonhandicapped.

I have spoken to the mayor about this, and he is interested in some kind of modification of the law. I think this is something that we should clear up, because absent of that, we are talking about the possibility of redundancy that would require astronomical figures that are just not within any degree of reason.

In light of that, let me pose this question. I have visited many of the schools, and they have some accessibility features. Do all the schools in our city have accessibility features?

Mr. Masten. No; I don't believe they do. In fact, in the context of the court case which has been going on now in the city, the consent decree has been signed with the plaintiff who was suing under Public

Law 94–142. There is a schedule for conversions and putting in ramps and other features, elevators, and so forth, which would improve accessibility in the schools, but it is not by any means on a 100-percent basis.

It is a phased-in program which is trying to have an even impact through all the districts within the first year or two, and expand from that point. A significant portion of the board of education's capital program is devoted to that work, and that is underway now.

Mr. **Biaggi.** Mr. Brenner, your third proposal—I have a pretty good idea of what the response will be, but for the record I think we have it, "The allocation formula should be revised to provide areas that have high concentrations of handicapped students with targeted allocations." Would you expand on that for a little bit?

Mr. **Brenner.** The present formula is basically on a national per capita basis as in the recent provision amendments that were enacted into law last year in Title I. In urban areas, you tend to have higher concentrations of the children who qualify for Title I services.

Similarly, you have in urban areas higher concentrations of handicapped. Therefore, the formula should be targeted to account for those concentrations, rather than spreading it out on a per capita basis, but taking into consideration the local conditions, the local concentrations which, of course, drive your costs up. This is the way that we think an amendment should be fashioned.

Mr. **Masten.** I want to make a point that when we talk about higher concentrations, we don't know, frankly, what the ultimate number of handicapped children as a percentage of the total school age population is that we should be serving. They have not, frankly, been identified in this city.

We are not arguing, I don't think, that New York City necessarily has a higher concentration in percentage terms than other cities. What we are saying is that there is a much higher number of students on an absolute basis. When you look at local expenditures in relation to levels of reimbursement both from the Federal Government and from the State, frankly, there is obviously a spread that exists there for each child. The more children that you have in the program, the more you are falling behind as a locality in terms of your ability to finance that program on a local basis.

So the special plea that we make in terms of areas with a large number of handicapped children is simply what amounts to a local filling of the difference between State and Federal aid and the actual cost of educating the handicapped students. That local support is obviously of a much greater magnitude when you have a large number of students. It is a very simple argument, and it is one that is related to our fiscal condition at this point.

Mr. **Biaggi.** In reference to your suggestion that the committee should look at the regulations to see whether or not they are overly restrictive, exactly what do you have in mind?

Mr. **Brenner.** We would like to provide you with an analysis of some of the regulations that we think could be modified and tempered. We would like your permission to send that to you.

Mr. **Biaggi.** And the fashion in which they should be modified?

Mr. **Brenner.** Yes.

Mr. Biaggi. Thank you, Mr. Chairman.

Mr. Simon. If you could provide that in the near future so that it could be entered as part of the record here, I think that would be helpful.

Mr. Brenner. We will be happy to do that.

Mr. Simon. Mr. Weiss?

Mr. Weiss. Thank you very much, Mr. Chairman.

My question is a followup to the last question that Mr. Biaggi asked.

I would like to put into a proper framework what is mandated, who does the mandating, and what role the Federal Government plays in making more difficult the capacity of the local systems to meet those mandates.

So that we are working on the same basis, let me state my understanding of the situation, and you correct me if I am wrong.

My understanding is that a series of court decisions has established the obligation of the States and localities to educate all children, regardless of handicap, and pursuant to those court mandates of local obligations, the Congress then passed legislation which, in essence, sought to reduce some of the local burden, local costs. It has been the failure to meet the intended assistance which is the real problem.

Is that a correct statement of the situation?

Mr. Masten. Yes; I would agree with that.

Mr. Weiss. The reason I ask that is because often in discussion of this issue, when people come to talk to me about it, the assumption is that if it were not for Federal congressional action, there would be no obligation on the part of the States and the localities to educate the handicapped children, and since we have mandated it now, it is our responsibility to pay the funds.

That is not so. It is clearly the local responsibility, as established by the courts. Tell me, within that context, what forms of Federal regulation, Federal action, are making your job even more difficult than it would be just under the court mandate.

Mr. Masten. My understanding of the Federal legislation, and also the State legislation which we must operate under, is that the State finds itself bound as well by the generalized mandate to provide an appropriate education for all children who are handicapped.

I am honestly not an expert on the development of the legislation and the respects in which the State law which we operate under is partly or wholly driven by requirements which are in the Federal legislation.

I should not speak for Dr. Gross, who will be testifying later, but my impression is that the mandates which he must deal with on a day-to-day operating basis, the specific ones which concern him, are more on the State level than the Federal level. The Federal law is of concern to us only in respect of those situations where State law is following a general premise laid down in the Federal law, and if the State mandate seems onerous or overly restrictive to either Dr. Gross or ourselves, or any other observers.

There may be situations in which the specific State mandates are really link and follow from the Federal requirements, and it would be in those types of circumstances that we would be concerned about Federal restrictions.

I think the most important part of our message this morning is really a fiscal one and not the regulatory one, because most of the detailed operational regulations that we deal with are quite frankly on the State level rather than the Federal level.

Mr. **Weiss**. I assume that some of the other witnesses to follow will respond to that, because it is my sense, after reading through all the background, that if Public Law 94–142 were never adopted, the States and localities would still have exactly the same obligation that they have right now. There may be some complications that we have thrown in, and we would like to know what those are, because it is in those areas that we can be of assistance.

Mr. **Masten**. My understanding of the role of Public Law 94–142 is essentially to make plain what the law of the land was, was going to be, and to provide a ready means for enforcement in the courts for the groups which have been deprived of the benefits of special education.

It was in that respect that it was a major accomplishment, and the working out of the details from an operational point of view in this State, as in others, was laid out on the State level.

Mr. **Weiss**. Thank you very much.

Mr. **Simon**. I think that it is really important that everyone understand the premise that Mr. Weiss has laid out. I have run into the same thing that somehow we have, at the Federal level, imposed this burden.

I have the good fortune or misfortune, I am not sure which, of being both on the Budget Committee and on this committee. Incidently, I might add that your budget director, Mr. Briggan, his father is a resident of my district in southern Illinois.

Mr. **Brenner**. In fact, he sent you a note that he could not be here today.

Mr. **Simon**. Where we are going to end up, I am not sure. The Senate, incidentally, met until about 3 a.m. this morning, and was unable to finish the budget. We are going to be going into conference probably Tuesday. In the House figure, we increased aid for the handicapped about 4.8 percent. The Senate figure is probably going to be lower than that. The conference figure, undoubtedly, is going to be somewhere in between, which means that we are, in fact, slipping.

One of the arguments that I get tossed at me on the Budget Committee—we are now a long way from our authorized level. We are now about 12 percent funded—taking New York City as an example, if we increase the funding from 12 percent to 15 percent for education for the handicapped, in fact there will be no increment in services for the handicapped. What you are doing is just handing another 3 percent in largesse to New York City that they can used for whatever they want.

In other words, it is a substitute, they say, for other funds. How do you respond to that?

Mr. **Masten**. I would disagree with that. The funds which we receive under EHA part B are reimbursable funds. They reimburse only appropriate expenditures for special education. They are used by the board of education only for special education costs. They are highly specific, and they are always targeted on the population that is intended to be served by Public Law 94–142.

Mr. Simon. I understand that. I am trying to buttress my own argument here with my colleagues on the Budget Committee. They say, while these funds specifically are used, in fact, they free some of your funds which would otherwise have to be used, to do other things.

Mr. Brenner. In part, I think that the argument is correct in that we have been driven to provide the services with tax levy dollars. Therefore, the formula which has lagged, which has not kept pace with the schedule, has forced us to go out in front because the act, the regulations, the court mandates require us to do this.

So we have gone ahead, and we have put our resources in. To a technical extent, yes, if it was increased from 12 to 15 percent, which would probably mean that we would get another $1 million, it would go to defray part of that cost.

In fact, since we have been on a rising population plane in identifying the handicapped, there are additional costs that are occurring. As I pointed out before you came in, in instructional materials alone, the city is increasing its budget with $89 million in tax levy in new costs this year. So part of that would be what we call a gap-closing measure to eliminate the necessity of using the city funds for compliance.

Mr. Masten. There is another response that I would like to add to that, which is, Dr. Gross and I have finished a period of about a month in which we have been negotiating and discussing the size of his budget for next year. This is a process which has taken place in a context of uncertainty over the total size of the projected enrollment for next year, and for the timely placement and handling of referrals into special education that will lead to one final population or another.

I think that it is important to point out that in conversion and in that process of developing the budget, we are never really in a situation where we say: This is the size of the budget that we are sending up. We know how big it is. Now, let's fund it. Let's put in city dollars, and then if we get Federal dollars, we will take those out.

If we know that the Federal allocation that we get is going to be substantially larger, I am sure that Dr. Gross will argue eloquently to us, and we will be responsive to him just as a matter of negotiating a final for that division of the board of education. We will be responsive to an awareness of the total resources that are available and targeted for that program.

Although it is true that there may be some opportunity to diminish the total level of tax levy support, it is not plain to me as a participant in the process that the automatic result of this would be that that would pull out the exact amount of tax levy that was added in either Federal or State support. One reason for that is that in a program that is growing as quickly as this one, we are all aware of the commitments which the city should be making to those children.

We are all aware of the additional components to the program that we would like to add if we can. So there is never a sense of a bottom line to a budget which is everything that it could be. Any additional dollars that we get are obviously valuable in allowing us to expand the services to that population.

We have a tight budget this year. We feel that we, in fact, are in compliance with the Federal mandates, but there is no doubt that if we had more funds, we would be trying to go beyond the strict letter of the mandates, which is essentially to meet our obligations to these children as best we can.

Mr. **Biaggi.** Mr. Chairman, if I may.

Mr. **Simon.** Certainly.

Mr. **Biaggi.** I think from the response of both of our witnesses, this particular program might be treated just a little differently. The one thing that comes through clearly is that any additional funding will have some impact on what the city does with its tax levy dollars.

Is it fair to assume very precisely and pointedly that there would be a partial reduction of tax levy dollars, but there would not be a total substitution?

Mr. **Brenner.** I think that that is a fair statement.

Mr. **Biaggi.** With the experience that we had with CETA, when we had the major cities before our committee and we developed the CETA legislation, many members of the committee were concerned that we would not be using CETA funding to substitute for the regular budgetary process for the tax levy expenditures.

Apparently, we were given the assurance, but I am satisfied that the assurance was not returned. The experience in this city as well as others is that they have substituted many of the regular employees, when they vacated their job, or whatever other reason, with CETA workers.

Mr. **Simon.** We thank you very much.

Our next panel is one that has been referred to, Dr. Jerry C. Gross, executive director of the division of special education of New York City public schools, and Mr. William H. Cochran, the deputy superintendent of public instruction for the Commonwealth of Virginia.

We have your testimony. If you wish to read it, you may. If you wish to enter it in the record and summarize it, in effect, it would expedite things a little.

Dr. Gross?

[The prepared testimony of Jerry C. Gross follows:]

PREPARED TESTIMONY OF DR. JERRY C. GROSS, EXECUTIVE DIRECTOR, DIVISION OF SPECIAL EDUCATION OF THE NEW YORK CITY PUBLIC SCHOOLS

The primary concerns about Public Law 94–142 relates to the extent of services to be provided to handicapped students and the proper funding for those services. It is still necessary to address on a national level both fiscal and professional responsibility for providing a Free Appropriate Public Education and the scope of that obligation.

The commitment of New York City to ensuring free appropriate education for all handicapped children has never been clearer. With New York City in the midst of an extreme fiscal crisis, it is important to emphasize the efforts of Mayor Koch and his administration to honor the requirements of Public Law 94–142. His commitment has resulted in the addition of nearly $100 million which represents a 33 percent increase over our previous budget for special education services mandated by the Federal government and paid for by the City. To appreciate the dramatic demands placed on our system and budget to bring about compliance, one should understand that our special education population has grown from 55,000 to 72,000 in just one school year. Even with this concerted effort, we still have many children to reach who are entitled to services.

This commitment to the needs of handicapped children on the part of New York City speaks loudly for a response from the Federal government. Yet Public Law 94–142 funding for special education remains at only 12 percent of the national average pupil expenditure. This 12 percent translates into only 3.4 percent of the total special education budget for New York City—a far cry from the original intent of the law.

Originally, projected federal allocations for fiscal year 1981 were 30 percent of the national average per pupil expenditure. This is a drastic failure of support on the part of the Federal government. As New York City Public Schools (as well as other major cities across the country) are facing severe budgetary constraints, it is essential that legislative action be taken to ensure an appropriation which is commensurate with the original authorizations.

In addition to providing federal monies at an appropriate percentage, other actions can be taken to assist in proper funding. Public Law 94-142 originally required two counts of handicapped children requiring special education. A subsequent amendment requires one count per year. Neither of these requirements takes into consideration the transient population in special education, thus funding does not reflect the number of childen served. Changes in the law should be introduced to allow for a cumulative count of all handicapped children served through the year. Metropolitan areas would benefit from this change since they are most affected by high mobility in programs. Costs are still incurred since evaluations and subsequent staffings are required for these students and seats in programs must be reserved. These activities require expenditures that are recoverable neither from state funding nor from federal funding.

Section 607 of Public Law 94-142 also authorizes grants for the removal of architectural barriers. However, no money has been appropriated for this purpose since the enactment of the law. Congress must make funding available to school districts for the removal of these barriers if local educational agencies are to comply not only with Public Law 94-142 but also with section 504 of the Rehabilitation Act of 1973.

Large metropolitan areas would also be assisted by being guaranteed 100 percent of the money they generate. Since major metropolitan areas are faced with an enormous student population and limited resources, it would be appropriate for money generated to flow through directly, thus allowing a 25 percent increase in the actual dollars available under EHA Part B.

Of particular programmatic concern is the subject of related services. It should be stressed that the present wording of the law makes the local education agencies responsible for providing or paying for a range of services that are not educational in nature. It is questionable whether these services, such as occupational and physical therapy, can be provided and supervised appropriately by educational agencies.

Other agencies should be made responsible for providing services within their area of expertise, and clarification of financial responsibility for these services should be given. A redefinition of the term "to benefit from special education" as it applies to related services would assist in delineating responsibility. In addition, a strong position must be taken that related services are only those which are required to assist a child in a special education program. That is, local school districts should be required to provide special education and those related services that are of an educational nature. School districts should not be required to provide, or pay for, related services that have not historically been considered education. While school districts could coordinate delivery of services, the law and regulations should make clear that the school district does not have the primary responsibility for payment of these services. In this light, legislation requiring third party payees should be considered.

The due process procedures developed to ensure that the rights of the student are protected during their involvement with special education have also proved administratively difficult. Appropriate funding would do much to lessen their weight. However, one area needs to be addressed. Current regulations and court decisions make it extremely difficult, if not impossible, to ever move a student while due process proceedings are pending. In certain cases, it is extremely important that the law provide some flexibility for the school officials to change a child's placement, even on an interim basis. Particularly, this is the case where a child is presenting a danger to himself or others, is disrupting the education of himself or others, or regressing in his education achievement because of an inappropriate placement. Clarification is needed to provide this flexibility.

Public Law 94-142 has provided a new range of possibilities to handicapped students. However, the educational structure created in response to its mandates is still new and fragile. Consequently, it is necessary that statutory and regulatory mandates not be too burdensome, and it is vital that sufficient funds be provided to reinforce the structure so that the gains it represents will endure.

I wish to make it clear that there is a strong commitment in New York City to reach the "full service goal" in P.L. 94-142. Our Chancellor and Board of

Education have made this clear with their efforts to support the development of services to students in need of special education.

We only wish to reach these goals as full fiscal partners with the State and Federal governments—a concept reflected in the law's original intent but somehow lost as the local districts struggle with implementation.

STATEMENT OF JERRY GROSS, PH. D., DIRECTOR, DIVISION OF SPECIAL EDUCATION, NEW YORK CITY

Mr. GROSS. Congressman Simon, Congressman Biaggi, and Congressman Weiss, I am Jerry Gross, the executive director of the New York City Public Schools' Special Education Division. I will have my testimony submitted for the record and just comment extemporaneously.

Mr. SIMON. Your testimony will be entered in the record.

Mr. GROSS. I appreciate the opportunity to spend a few moments with you this morning and comment on Public Law 94–142, and how it is being implemented in New York City. As I speak to you this morning, it is interesting to know that the mayor is announcing his budget to the city, which will include, as my colleagues across the river, Mr. Brenner and Mr. Masten have indicated, over $89 million for special education over past years' expenditures.

The budget for our division is up some 33 percent over last year. It is a testimony, I think, to the city's commitment to our schools even in a time of severe fiscal crisis. I need not spell that out in any detail because I think the Office of Management and Budget has done that very forcefully.

The commitment from Public Law 94–142 this coming year over last year's commitment will be one-half a billion dollars. So the comparison there is, I think, quite remarkable, the comparison to the funding we are getting out of 94–142. In total, Public Law 94–142 will constitute 3.4 percent of my budget in the coming fiscal year.

When I testified before Senator Mondale in 1973, and under S. 6, which was the Senate version of Public Law 94–142 before it became law, we were talking about a partnership between the State, the Federal Government, and the local districts. We were talking about a 30-percent partnership from each of those components. With this 3.4 percent that we are getting this year, we can see that we are a far cry from the 30 percent that we had anticipated at least of the per pupil expenditure as defined by law. With the brakes that have been put on 94–142's level of funding in Congress and in the Senate, and by Mr. Carter, we are quite distressed.

The problems in New York City, however, are not just confined to money. I don't want to dwell excessively on money, but I want to say that the board of education and the chancellor, who have lobbied strong for an increase in our funding from the city, are doing so at a time when they are anticipating something approaching $1 million cut in regular education. Now this kind of imbalance is creating great difficulties for us in the city in our relationship with regular education, as you can understand.

We would like to point out several other needs under 94–142 that I think Congress should consider as it conducts its oversight hearings.

The cumulative count on an annual basis is something that we think would be an advantage for us. We have a single count system now, which on a given date in the year, now in December, counts handicapped children. It does not count all the children that we serve after that point in time during the year.

So it leaves out probably several thousand children that we should get credit for, but do not now get credit for.

We think that there should be some funding for the barrier removal, the architectural barrier problems that we feel in the city and experience in the city.

I am delighted to know that the Office of Civil Rights has responsibility for enforcing the barrier removal process under section 504 of the Rehabilitation Act of 1973. They have been quite lenient in their interpretation of this process. They have allowed us to make adjustments that do not require dramatic barrier removal, but still it is a tremendous burden on us.

We would like to see the State discretionary money, the 25 percent of funds that we generate—and in this city it means about $3 million that stops at the State level—we would like to see some commitment from the Federal Government to reducing that State portion because we feel that the cities generally don't get their fair share of those discretionary funds.

The whole area of related services, as I pointed out in my testimony, is very onerous for us. It has expanded to include things that we have never conceived of as being part of education, such things as occupational and physical therapy, which, incidentally, there is no such research to show that this has any relationship to improvement in the instructional programs for children. Nevertheless, we have to provide this and we are competing with hospitals and we are competing with the suburban schools whose salary schedule makes it very difficult for us to attract these people.

In some cases there has been the claim and feeling on the part of the board that we are running hospitals rather than schools for certain children. We think they need a free and appropriate public education, but we would like to see some participation from some of the national medical bills that are in use in these areas of related services that are clearly medical in nature.

I think that we need to encourage more informal due process procedures in these cities. We have become so structured in our due process procedures that we really have to establish a law department to handle this entire area.

Mr. SIMON. If I may interrupt for just a second. Is it because of the Federal mandate that you are so structured, or is it just tradition here?

Mr. GROSS. The structure has increased with the Federal mandate. It has pushed us more toward formal due process procedures. When I was in Minnesota, we had moved toward more informal procedures. I know there are other States that are moving in that direction.

I would like to see the Federal Government encourage through regulation more informal due process procedures which do not include lawyers, because lawyers beget lawyers and legal proceedings beget legal proceedings. They don't beget, in my view, in 10 years of trying to work with these legal problems in special education, necessary educational solutions.

Some people have claimed that 94-142 is the employment act for lawyers in some ways, and that has some truth to it. It is a cynical view, but it has some truth to it. We would like to see more informal procedures, Congressman, for the resolution of these difficulties.

We also need some leadership in 94–142 that will help us come out of the anachronistic categorical structure that 94–142 is built around. I recall in our discussions with the then Senator Mondale the concern we had about the categories being the cornerstone for the organization of 94–142.

We think there are some States, including New York State and Illinois, Congressman Simon, where we spent 4 years working on that, as you are aware, trying to remove some of the stiff requirements that the State and Federal Government had for categorical points of organization in the law.

We would like to see a more generic approach, not that we are trying to let more children in, because we know the dollars will not stretch, but we would like to have it organized a little bit differently.

I would like to just mention briefly in closing my remarks that New York City has been, I think, attacked unfairly by a number of organizations. Every time I look at congressional hearing reports, some national organization reports that BEH, the Bureau of Education for the Handicapped in Washington, is not properly meeting its obligations to insure the application of 94–142 in the cities and the other communities in our country.

They always point to the problems in New York City, the difficulties we have with referral, evaluation, and placement, our infamous waiting list problems. Before I came to this city, there was a figure thrown around of 35,000 to 40,000 children on waiting lists and not getting services.

I would like to just say for the record that right now in New York City there are 3,600 children awaiting placement. There are 1,200 children awaiting evaluation. There are some 1,300 to 1,400 children who are in process over 60 days, which is over the legal time limits, and there are still 6,000 to 7,000 whom we are still working to catch up with on our so-called illegal waiting list.

It is nothing as dramatic as the 30,000 to 40,000 figure that we see thrown around. We would like people to begin to recognize the progress that we are making in this regard. We also would like to say that with some of the efforts the board has made, the chancellor has made in the past 7 or 8 months, we think that that problem is going to disappear. We are hopeful it will disappear over the next 6 months to a year.

When you think of the fact that we have some 32 to 37 districts, including elementary and secondary, each the size of St. Paul, Minn., roughly, if you break down those waiting list figures, it is less than 200 children per district, so it is not that dramatic. It is still a problem. It still means that children are not getting services, but it is not as difficult, or it does not deserve the kind of attention it gets.

In summary, I will say that we are making progress in this city. I will say that Public Law 94–142 and Congress could be somewhat more helpful in their funding responsibilities. Yes, we have some catching up to do, as the Office of Management and Budget reported. We are serving now just over 8 percent of our city's population in special education programs, and have moved up some 20 to 30 percent in the last 7 or 8 months in that figure.

We know we have further to go. We project by the end of next year to reach some 10 percent level, which is a doubling of the population in less than 2 years. We need help from Congress, and I appreciate the opportunity to spend these moments with you.

Mr. SIMON. Thank you very much.

If I may just mention, we have some time constraints. I understand that my colleagues will have to leave around 11 o'clock. My staff and I will be visiting some facilities this afternoon, starting at noon, so we will have to kind of squeeze the time in somewhat.

Mr. Cochran, I was not directing that at you, but at everyone.

[The prepared statement of S. John Davis follows:]

PREPARED STATEMENT OF S. JOHN DAVIS, STATE SUPERINTENDENT OF PUBLIC INSTRUCTION, COMMONWEALTH OF VIRGINIA

Congressman Simon, distinguished members of the subcommittee:

I am pleased to have the opportunity to speak to you today about some of the critical issues which have resulted from legislation on education for the handicapped and, more specifically, the Education for All Handicapped Act, Public Law 94–142.

The Congress is to be commended for the enactment of this important piece of legislation and, more particularly, the accompanying funding which is necessary to support state efforts in providing special education programs for the handicapped. It establishes for the first time clear and undisputed rights to appropriate public education for handicapped children.

It may not be necessary to tell you that the Commonwealth of Virginia has been in the forefront of this important movement from the very beginning. As early as 1972, the Virginia General Assembly enacted legislation which provided many of the guarantees that were to come on the national level later with the enactment of federal legislation. While some disparities existed initially between Virginia legislation and the federal enactments, these were largely procedural in nature and were quite readily eliminated by the General Assembly of Virginia as soon as they were identified. In other words, Virginia had no problem with either the intent or the objectives, of the federal legislation. There were some concerns generated at the local and state levels over many of the prescriptions in Public Law 94–142, but Virginians, by and large, thought they knew what they were getting into with the implementation of the Education for All Handicapped Act (EHA). We were unprepared, however, for the heavy fiscal impact of far-reaching and costly related services thought to be vital to the realization of program accessibility coupled with the impact of runaway inflation.

To illustrate the commitment to educational programs for the handicapped in Virginia, the following chart shows the enrollment in Virginia of handicapped children in Special Education programs by exceptionality:

CHART 1

VIRGINIA STUDENTS SERVED BY SPECIAL EDUCATION PROGRAMS[1]

Exceptionality	1975–76	1976–77	1977–78	1978–79
Educable mentally retarded	17,351	17,568	18,198	16,395
Trainable mentally retarded	3,558	3,502	3,612	3,518
Emotionally disturbed	2,638	3,007	3,202	3,909
Physically handicapped	558	503	657	572
Learning disabled	15,570	18,390	21,057	25,373
Hearing impaired	1,308	1,392	1,399	1,374
Visually impaired	495	653	1,100	602
Speech impaired	31,548	35,030	37,128	36,158
Multihandicapped	3,958	1,356	2,465	1,834
Subtotal	76,984	81,391	88,818	89,735
Detention	8,650	8,680	8,929	8,440
Grand total	85,634	90,071	97,747	98,175

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[1] Figures include preschool.

Since 1972, school systems in the Commonwealth of Virginia have served approximately 450,000 children in all areas of exceptionality. This year alone we shall be serving approximately 100,000 children in all areas of exceptionality.

There are a number of points which I wish to make today. Undergirding all of them, however, is the prime issue of funding. Quite frankly, Congress has given us more mandates than we in Virginia can address reasonably with the funds made available. You know, and I know, that the large majority of these funds come from taxpayers: the people. You also know that if these funds are not provided at the federal level they must be provided at the state or local level. This turns out to be a "Catch 22." One might be led easily into the trap of reasoning that inasmuch as programs are not being fully funded through federal channels, then, local and state taxing programs must provide the difference, and this is only equitable; but this is misleading and too simplistic! The fact is that citizen-dollars are already being funneled into the federal budget and that education—more specifically, education for the handicapped—is competing for tax dollars (already collected) with other federal programs! Public Law 94–142 is a commendable piece of legislation and Virginians are virtually committed to full implementation of all the needed programs for handicapped children, but these programs must be fully and completely funded. This has not been the case. Congress has not funded Public Law 94–142 nearly to the extent planned. The following chart illustrates the disparities:

CHART 2

PUBLIC LAW 94-142—AUTHORIZATIONS VERSUS APPROPRIATIONS

[In millions of dollars]

	1977–78 (50 percent)		1978–79 (10 percent)		1979–80 (12 percent)		1980–81 (12 percent)	
	All States	Virginia	All States	Virginia	All States	Virginia	All States	Virginia
Authorization amount	315	5.3	564	12.1	1,200	30.5	2,320	51.3
Appropriation amount	315	5.3	564	12.1	804	18.3	874	20.5
Discrepancy amount	0	0	0	0	396	12.2	1,446	30.8

As you well know, the funding percentage under the EHA, Part B began at 5 percent of the annual per pupil expenditure (APPE) for fiscal 1978. This was to be increased to 10 percent of the APPE for fiscal 1979, 20 percent for fiscal year 1980, 30 percent for fiscal year 1981, and 40 percent for fiscal year 1982. Educators were elated at the most and encouraged at the least in the initial funding stages. It was like the Elementary and Secondary Education Act (ESEA) all over again. Educators were convinced that Congress would follow through with its intent to fund fully education for handicapped children and, indeed, this was the case in the first two years. Today we are somewhat less than encouraged, and even disheartened, about the prospects of funding the Education for All Handicapped Act. Because of funding cutbacks in this program, we find that we are hard pressed to deliver all of the programs that are believed necessary. Funding authorization levels have been disappointing and as a result programs have not always met the expectations established for handicapped children. Failure to fully fund the law has resulted in many problems for educators in state agencies and in public school systems, but, especially, it has resulted in a patchwork system of service delivery to handicapped children.

To illustrate the urgent need for federal funds, Fairfax County Public Schools' excess cost per handicapped pupil for fiscal year 1980 ranges from $471.00 to $7,649.00, depending on handicapping condition and services provided. Of that amount they received only $165.00 per pupil in flow-through funds from the federal government under Part B of EHA (Public Law 94–142).

Inflation makes the funding outlook for the next few years look even worse. The cost of providing a "free appropriate public education" to handicapped students is being dramatically increased by unpredictable inflation without any corresponding increases in federal flow-through funding. As a result, for example, Fairfax County Public Schools will have to spend over $200,000 in additional local funds during fiscal year 1981 to continue the level of services for handicapped children that were funded from federal flow-through funds during fiscal year 1980. It is especially discouraging to see that Congress now appropriates flow-through funds at a rate far less than one-half that authorized by Public Law 94–142.

On the basis of the foregoing analysis, the following recommendations are respectfully submitted:

1. Fully fund the Education for All Handicapped Act, or
2. Amend the statute in order to provide support to states which make timely and substantial use of Public Law 94–142 funds if full funding is not possible, and
3. Decrease the requirements in the legislation if full funding is not possible.

Technical changes in the law.—There are some areas in the legislation that need revision. Specifically, these are as follows:

1. Related services

The concept of related services is fuzzy. BEH regulations require provision of those services which are thought to be necessary "to assist a handicapped child to benefit from special education." The current broad definition of related services gives little guidance to local education agencies as to either the level or type of services required. Almost any social, diagnostic, or developmental service could be considered assistance to handicapped children. Because the current definition of related services is so broad, problems exist between and among school divisions in terms of the scope of services to be provided. There seems to be little or no distinction between treatment and educational services. Some would say that intensive psychotherapy, chemotherapy, and nursing services, for example, are included under the rubric of related services. Others argue that physical therapy and occupational therapy must be provided under related services if they are to have any corrective effect on a handicapped child, even if these services are not directly related to the child's classroom program! I do not believe that this latter position was the intent of Congress! To many educators, the interpretation is that public schools are responsible for treatment as well as education. In this fashion, the EHA has taxed to the limit the resources of local school districts!

Also, misunderstandings have resulted in an expectation that public schools must now provide such services as psychotherapy, diapering, and catheterization that are well beyond the expertise and/or traditional roles of school people and more properly belong within the domain of a health treatment system. School districts do not have the resources or, in many instances, legal mandates to provide treatment types of services. They are forced to rely upon state welfare and health agencies and private facilities to provide such services. Also, because these other state agencies operate under a different statutory framework, public schools and the state education agency are left with virtually no "say so" as to how, when, or to whom treatment services are given.

The term "related services" is indeed too broad. In a very small school division, it poses a tremendous hardship due to the need to go "outside" for every service due to low incidence of particular needs. The present definition of "related services" is inadequate because it allows, at least arguably, for the inclusion of almost any service that may help the child, without regard to cost or the appropriateness of a school system being required to provide the service. Instead, it is recommended that a specific list of appropriate related services be developed and explicitly defined and that the mandate to provide "related services" be specifically limited to those services on the list. I believe that special education professionals have had enough experience now with the implementation of Public Law 94–142 to permit them to develop a specific list of related services that would both remove the existing uncertainty about the nature of the mandate and be fair to handicapped children.

A good example of the need for a precise definition of "related services" is the controversy now in progress between the State of Connecticut and the Office for Civil Rights over the provision of therapeutic medical and psychiatric services to handicapped children as part of the "related services" mandate. I am sure you can see the implications for local school districts if special education comes to include medical and psychiatric services for handicapped children. If such services are to be mandated, they can most efficiently and effectively be provided by other governmental agencies and not by local school districts.

Careful consideration should be given to separating educational services from medical therapeutic services. Some "related services" are medically oriented. Few school divisions have the expertise to be able to employ medical professionals, even if such professionals are available. The lack of clarification in this area results in professional educators writing Individualized Educational Programs (IEPs) which include medical services for which they do not have the expertise or training to appropriately include, not to mention that they do not really know what is being prescribed.

Non-educational services which have been mandated should be the responsibility of other departments, especially medically related services. Custodial services, particularly for the severely handicapped, should not be the sole responsibility of the public schools. Other agencies must be given some responsibilities. Specifically, I ask you to consider doing the following:

A. State that the state education agencies and local education agencies must provide only those services which the public schools are empowered to provide under existing state law,

B. Assign full funding and responsibility for those related services (therapeutic and corrective) that Congress deems necessary (in order to ameliorate handicapping conditions in children) to those state agencies that already are authorized under state law to provide such services,

C. Remove the "related services" requirements entirely. The effect of this would be to leave in the hands of the local public schools the decision as to what additional services they have the resources and ability to provide. Most diagnostic and testing services would still be provided despite this amendment, since such services are necessary for individual education program development.

2. The individualized education plan (IEP)

The receiving teacher of a mainstreamed pupil should be on the IEP team. It makes no sense at all to develop a detailed plan for a student before the student is seen by the teacher on whose shoulders implementation falls. Also, sending a proposed IEP to parents for approval instead of waiting for parents to attend, or refuse to attend, an IEP meeting will save days or even weeks per student—time which could be much more productively spent in classroom motivation. The removal of the requirement of having an administrator present at IEP meetings would add approximately an extra day in the principal's work week to be spent on improving the total instructional program. Limiting the IEP to annual goals would help eliminate needless revisions during the year.

Another issue is that the naturally humanistic and compassionate nature of most school personnel, especially those associated with special education. This has caused persons on IEP and eligibility committees to prescribe wondrous and expensive cures that have the full backing of laws and regulations. Thus, the ancient administrative tenet of following lines of authority to the budget has been circumvented; this fact alone may be the most debilitating and confusing one for traditional administrators. This tendency appears to extend even to state departments of education. It has always been present at the federal level.

The IEP procedures could be improved upon by requiring the full conference only upon initial enrollment. Annual and other reviews would be done by the teacher and parent. Specifically, I ask you to revise the law to:

A. Allow school districts to prepare a written, proposed IEP which can be sent to parents for their review. If parents are satisfied, they can sign the IEP and return it. If not, they can request an IEP conference.

B. Allow school districts to prepare the IEP after the child has been placed in a program. This permits the teacher to establish more meaningful program recommendations for inclusion in the IEP.

C. Allow school districts to limit attendance at IEP conferences to the teacher and parents. Administrative staff should be involved only when needed.

D. Amend the IEP content requirements to include only annual goals, not short-term objectives. Such objectives are difficult to write and require frequent revisions.

3. Summer school or the extended school year concept

I am concerned about the implications of the federal judge's decision in *Armstrong* v. *Kline*, which could lead to the requirement that 12-month programs be provided to all handicapped children. My concern, however, is centered on the inherent inequity of requiring a local school district to provide a 12-month program for handicapped students but not for other students. If the Armstrong decision stands, we will surely face additional litigation demanding "equal protection" for all other children where summer programs are concerned.

The issue of the extended school year is a very important one. It should be noted that if such year round and weekend programs are provided to handicapped students because of possible regression in achievement, that many research studies indicate that regular students may regress over the summer period. Carrying the reasoning to the final conclusion could result in such programs being required for all students upon demand of the parents. In addition, schools cannot be responsible for all phases of a child's life. Parents must have and accept some responsibilities. It would appear that the schools are being asked to assume total responsibility for a handicapped child's life.

The extended year ruling must be dealt with by Congress by clarifying the law in such a manner that would make it perfectly clear the states would not be required to provide beyond the school year for any student.

4. The role of the State education agency

Finally, the role of the state department of education must be clarified. It is proper, we think, for the SEA to control the Part B funds. We accept our responsibilities for developing annual plans and monitoring programs in school divisions and other LEA's. If we are to be responsible, then give us the dignity that goes with accountability. We resent BEH looking over our shoulder constantly and even monitoring on top of state monitoring. Either give us (SEA) total responsibility or none.

Thank you for the opportunity to appear before you today.

STATEMENT OF WILLIAM H. COCHRAN ON BEHALF OF S. JOHN DAVIS, STATE SUPERINTENDENT OF PUBLIC INSTRUCTION, COMMONWEALTH OF VIRGINIA

Mr. COCHRAN. Chairman Simon, Congressman Biaggi, and Congressman Weiss, Virginia does appreciate the opportunity to present its views here today. You have a statement that we have submitted. I suppose that could be ready by someone who is a rapid speaker in 10 minutes, but I am not a rapid speaker, so I will try to summarize it. If you have any questions, we could have a discussion at that time.

Mr. SIMON. Your full statement will be entered in the record. If you could summarize, that would be appreciated.

Mr. COCHRAN. Fine.

Let me say initially that Virginia did not have any opposition to Public Law 94–142. We did have a State law on the books since 1972 which was remarkably similar to the provisions of Public Law 94–142, and was a great benefit to us in reducing the problems of adapting our operation within the State to Public Law 94–142.

We had some reservation about the legislation, though, because it was prescriptive in nature, very specific, much more so than we had seen previously. We did worry about that. As time has gone on, we still have some of these concerns.

I could echo the statements that have been made: too many mandates and not enough money. My friends at the local level tell us that what you fellows at the Federal level don't mandate, we do at the State level, and we don't have any better history of funding than you do; but that is, I guess, where we live.

There is, I think, much evidence to point out that a problem does exist. For example, Virginia is scheduled to receive this year about $18 million for this legislation, and we had anticipated, or had been led to anticipate, about $30 million some time ago. It is at the 60-percent level, and decreasing as time goes on. This gives us a problem.

Fairfax County, for example, which is our largest school district, has a specific problem in this nature in that their overcosts, as we call them, for special education of a child would be anywhere from $471 per pupil to $7,600. Of this, they are getting about $165 of these flow-through funds from Public Law 94–142.

The State, in this particular case, is better, but it is dropping a load on Fairfax which means that they will assume this next year about $200,000 of their local money which were previously taken care of with the Federal funds. It is presenting us with a problem. The lack of funding to 70 percent is the problem here.

We had three recommendations in this particular regard. Obviously we would like to see it fully funded. Failing to do this, we feel that some amendments to the statute are in order if we are going to be honest with ourselves, amending the statute possibly to put the money where the States are doing a better job in really following the mandates of the legislation. I don't know exactly how you would do that, but we think that this would be equity.

The third thing would to decrease the requirements in the legislation if full funding is not possible.

We have some specific problems, and I think Mr. Weiss referred to these. We have some hangups, some points of difficulties with these related services. The reference here is vague, and we have a lot of interpretations on what related services are.

For example, BEH regulations say that the requirement provisions of these services which are thought to be necessary "to assist the handicapped child to benefit from special education." This leaves the door open pretty far as far as interpretations go.

Some people would say, for example, that intensive psychotherapy, chemotherapy, and nursing services are included under the rubric of related services. Others argue that physical therapy and occupational therapy must be provided under related services if they are to have any corrective effect on the handicapped child, even if these services are not directly related to the child's classroom problems.

Our problem, of course, is that the law puts the responsibility on the public school system. We are getting into an area where even when the public school systems make a conscientious effort to provide these services, they are out of their area of expertise. They are dealing where they are not well equipped to deal.

We feel here that other agencies are better equipped. Departments of health and other services within States are better able and better equipped to do some of these related services. Perhaps this should be an amendment to Public Law 94–142.

We recommend in this connection that a specific list of appropriate related services be developed and explicitly defined, and that the mandate to provide related services be specifically limited to those services on the list.

We believe that special education professionals have had enough experience now with the implementation of this law to permit them to develop a specific list of related services that would both remove the existing uncertainty about the nature of the mandate and be fair to the handicapped children.

There is presently litigation between the State of Connecticut and the Office of Civil Rights over the provision of therapeutic, medical.

and psychiatric services to handicapped children as part of the related services mandate. I think that just points up the problem there on related services.

We would in this connection state that the State education agencies and local education agencies, it would be helpful if they were mandated to provide only those services which the public schools are empowered to provide under existing State law.

Second. Assign full funding and responsibility for those related services. We are not suggesting that they not be provided, but assign the funding and responsibility to those State agencies that are already authorized under State law to provide such services.

Third. If these are not done, then remove the related services, and let us try to hammer out the provision of those that are most essential.

In the technical problems that we have had, we have problems with the IEP, the individualized education plan. This has been more costly and time consuming than we had anticipated. There are certain things that we think would smooth it out somewhat.

For example, putting in a receiving teacher of a mainstreamed pupil on the IEP would make a lot of sense to us. We do add them where we can.

We think that it does not make any sense to develop a detailed plan for the student before the student is seen by the teacher. For this reason, we would like to keep this open for a longer period of time, even perhaps writing the IEP's, sending them to the parents, and then having the conference and negotiate or working out the differences that would exist at that time.

Mr. SIMON. Excuse me for interrupting.

Can't you do that now? Do the Federal regulations prohibit you from doing that?

Mr. COCHRAN. As we interpret it, we get them altogether at the same time, and start on the program at that point.

Also, there is a requirement that has an administrator present at these hearings, or at these conferences. We found that that has not been necessary, and it has been most time consuming for the administrators. It has taken a good deal of their principal time which takes them away from some other things that we would like for them to do also.

Another technical problem that we are having is with the extended school year concept. We find here that there is litigation already on this particular subject. We feel that the law could be amended to that extent, given Congress feeling about what the extended school year was, and whether they had this in mind or they did not.

We feel that if the courts decide that the extended full year is mandated for children in special education programs, then very shortly thereafter we are going to have litigation by parents of children who are in normal school programs that they also need the extra 3 months of attention.

I rest my remarks at this point.

Mr. SIMON. Thank you very much.

Dr. Gross, you mention your waiting list is now from 6,000 to 7,000, which I am pleased to see is appreciably less than the figure that I had heard. How would that compare to 1 year ago, or 2 years ago?

Mr. **Gross**. The data that was collected and kept by the division in the past does not lend itself to those kinds of comparisons. I could say, from what I have been able to gather, that it is cut in half at the least, but I cannot give you an exact figure for the past years. They did not collect data that way.

Mr. **Simon**. You dropped a very brief sentence in your testimony saying that the money that is going to the States could more effectively be utilized. Can you expand on that a bit?

Mr. **Gross**. The moneys that we generated this year were approximately $11 million under Public Law 94–142. The State is allowed to keep 25 percent of those funds for discretionary purposes. With our fiscal problem, we would like to see them flow directly to us so that we can have access to them and plan for them. This is the point that I was trying to make.

Mr. **Simon**. You are not suggesting that the State should get no discretionary funds, or maybe you are.

Mr. **Gross**. I think 25 percent is healthy for the State, too healthy, quite frankly.

Mr. **Simon**. I would be interested in a State reaction to that.

Mr. **Cochran**. We see that the discretionary funds do get to the localities. We have used them to buttress the situation one place or another, or where we find that people do, indeed, pick up children during the year.

Mr. **Simon**. What would be the impact on Virginia if that were, let us say, reduced to 20 percent?

Mr. **Cochran**. I think that it would be negligible in Virginia.

Mr. **Simon**. One final question here.

Mr. Cochran, I am going over your statistics on page 2.

Mr. **Cochran**. There is an error; I think you have probably found it.

Mr. **Simon**. I was a little bit startled when you came out with that. I think that it should read 98,135.

Mr. **Cochran**. Yes.

Mr. **Simon**. I notice that the two areas that show a very substantial growth under the Federal law, or maybe not because of the Federal law, are learning disabled and emotionally disturbed.

I would be interested, Dr. Gross, have you had that same experience?

Mr. **Gross**. The increase in the emotionally disturbed and learning disabled?

Mr. **Simon**. It has been fairly static in the other programs with those two exceptions.

Mr. **Gross**. We found that static condition. Those are similar to our figures, I would say, just looking at them, but the retarded have stayed the same. The learning disabilities are up. The emotionally disturbed is up dramatically.

We are not sure if we are identifying new children or if it is a categorical drift. That is to say, children move from one category to another because some labels are less onerous for parents and professionals to deal with, and less stigmatizing for children. That is going on as well. Also the new technologies for identifying children have basically focused on learning disabilities in the last 5 years.

Mr. **Simon**. Mr. Biaggi?

Mr. **Biaggi**. I have one question addressed to each of you.

Are you currently spending moneys on related services?

Mr. COCHRAN. Yes, we are.

Mr. GROSS. Millions, and we are projected to go up dramatically in that area. We are having extreme difficulty finding people. The city had at the beginning of last year 2 physical therapists, and we needed something like 70 if we would have met the requirements of the IEP's. So it is a real problem.

Mr. BIAGGI. What is your reaction to that portion of the law?

Mr. GROSS. I think that it has to have more discretion for the local districts. I think we need to have the participation of the medical community.

Mr. COCHRAN. I would have similar, with the difference that I think where it is clearly indicated that they could be involved and do a better job, the responsibility should be put on the medical community.

Mr. BIAGGI. How do those related services impact on the educational process?

Mr. GROSS. It really allows us to use less restrictive environments for children. If we did not have the related services in physical therapy, occupational therapy, and adapted physical education, there are children who are so handicapped that they would be required to be in perhaps a day school or a residential facility where those services have traditionally been available, or in hospital schools where those services have been available.

The positive side of it is that it has allowed us to move these children toward more normalized environments. We have brought the services into the schools, rather than bringing the children into the hospitals or residential facilities.

Virtually all the children in the city have some related service or another, and this includes psychology and social work services. For real intensive services like occupational and physical therapy and the like, probably 10 percent of the population would have that kind of need, the severely handicapped children primarily.

Mr. BIAGGI. Mr. Cochran, you make reference to the extended school year in the *Armstrong* v. *Kline* case. Is it your contention that you don't have a summer session for the regular students?

Mr. COCHRAN. I think if we require the summer session for the handicapped students, then we need to require the summer session for regular students. Whether they avail themselves of it, I think, would be voluntary.

Mr. BIAGGI. But you don't have it now?

Mr. COCHRAN. No; we do not mandate summer school.

Mr. SIMON. Mr. Weiss?

Mr. WEISS. Thank you, Mr. Chairman, but I will not take any time for questioning. It has been good, solid testimony.

Mr. SIMON. Thank you very, very much. We really appreciate it.

The next panel is Gail Cartenuto, Theresa Travalino, and Mr. David Spidal.

If I may call on Gail Cartenuto, health conservation teacher at Public School 85 of the Bronx.

Let me say to all three witnesses, if we can enter your statements in the record. I hate to ask you not to read them, but we are really getting into time constraints, so I would ask you to summarize.

STATEMENT OF GAIL CARTENUTO, HEALTH CONSERVATION TEACHER, PUBLIC SCHOOL 85 OF THE BRONX

Ms. CARTENUTO. I am a health conservation teacher at Public School 85 of the Bronx. My school population consists mainly of physically handicapped children.

At our school, we operate on an interdisciplinary basis. We have therapists, occupational therapists, speech teacher, medical director, health aids, as well as classroom teachers.

This particular unit is very familiar to me since I went there as a child, and I am now back teaching under special education.

I have a degree in speech pathology from Columbia, as well as credits in special education. Although I was honored to be selected by the Council for Exceptional Children to speak here, in the beginning I was very reluctant as I felt there were others who were familiar with the law, and had more of an impact on its interpretation. However, as I reflected, I realized how much this law affected our unit as well as me.

I have a few points that I would like to discuss, and I would like to begin with our evaluation process.

In the past we evaluated our orthopedically handicapped children ourselves. This evaluation process, we felt, was efficient in both time and personnel. The children were placed often within days of identification. Our medical director was there as well as our teachers and therapists for diagnostic availability.

Presently the Committee on the Handicapped has been known to send children to centers not equipped to handle them. Although we have vacancies on our register and we know there are children that need our services, there seems to be a backlog in the evaluation process.

A case in point is a parent of one of our students who contacted us 6 months ago, believing that her child was a candidate for our particular unit. However, she had to wait 6 months and had to resort to pressuring the Committee on the Handicapped before her child was appropriately placed.

One offshoot of the law is the labeling. When a special education child enters a classroom, the children, as well as the teachers, realize after a short period of time whether or not the child belongs. If it is an inappropriate placement, the teacher, the class, and the child himself will suffer for it.

I really feel that the emphasis should not be placed on delabeling, but on positive attitudes toward all handicapped children. A visually limited child may need glasses. A child with a hearing problem may need a hearing aid. There is no way of getting around this, and delabeling is not going to solve the problem in our society.

We must learn to accept things as they are, and to help our children deal realistically with their attitudes. Acceptability, and not delabeling, I feel is the key.

I would like to shift my attention now to the idea of supportive staff. In actuality this has not been accomplished because of the physical problems at present. As I work in an interdisciplinary unit, 2 years ago we had the services of a social worker. This badly needed service has been cut. For years we had a psychologist who came once a week. Now this has been eliminated.

I would like to point out here that there is an excessive amount of redtape that must be cut through for children to obtain braces, to get specially made eyeglasses, or to be transported to and from hospitals. This aspect of the child's total development needs a thorough followthrough that only the expertise of a social worker can provide.

Many adjustments have to be made by the physically handicapped child if he is to succeed in the mainstream of society. Many times the services of a psychologist can accomplish this goal. To really focus on developing the total child, we feel the reinstatement of these supportive services is very necessary.

I would like to focus my attention on the least restrictive environment for the child.

We have two children who are equipped psychologically, academically, and physically to handle the demands of the regular class, and at the same time utilize our learning center for physical therapy for activities of daily living.

I might point out here that these children remain on our registers although their day is spent in a self-contained regular class. In our particular situation, our mainstreamed children are a very welcomed contribution to the class they attend.

At present, the setup of adding children to teachers' regular classes without adding them to their registers certainly can lead to an unreceptive welcome of an additional burden to an already oversized class situation.

Mainstreaming for the physically handicapped is a positive direction for special education if the child's psychological, academic, and physical needs are met. The attitude of the teacher in accepting the child in the regular class, the school, the principal, and of course the other children is extremely important.

If the child feels, or is made to feel, a misfit, mainstreaming could be destructive. It is important that we weigh what we are doing and how we handle each child. Some physically handicapped children take a longer time than others to cope with the regular classroom situation.

Within our unit, we can say that the children develop positive attitudes toward themselves, and the school and staff have positive attitudes toward those children. The children we have mainstreamed benefited from both the special unit and the regular class.

These children have also made contributions to the unit and the regular class not only by their academic accomplishments, but by their attitudes and other intrinsic values, the foremost of which is courage. We trust that they will bring the same values to our society.

I would now like to focus on accessibility. The Federal Education for All Handicapped Children Act defines related services as: transportation, developmental, corrective, and other supportive services, including speech pathology, audiology, psychological services, physical and occupational therapy, recreation and medical counseling services as may be required for children to benefit from special education.

Frankly, I am a little concerned about this interpretation of accessibility as it pertains to the physically handicapped. We render certain needed therapies, and we participate with the regular school during lunch and in certain assembly programs. Our staff helps to bring the children to the auditorium for these programs.

Life would be easier by far if we had a ramp to help us out. One wonders what redtape must be cut to build a ramp. I would assume that it would be cheaper to build a ramp for starters than to remove our entire unit to a new and overcrowded school not equipped to handle our therapeutic staff, but which does have an elevator and a ramp.

Access to our therapies is of utmost importance to us. We have this at Public School 85. More efficient accessibility to the auditorium and the library, as well as the multicultural centers could be accomplished by the construction of a ramp.

Recently, in the name of accessibility, we received a memorandum to the effect that we were going to be moved from our long-established unit to a place where there is an elevator. The options given to us were: a school that had little or no opportunities for mainstreaming and little or no space for our therapies. The school in question went up to the third grade, and our children go to the sixth grade. This solution would be defeating our objectives for the orthopedically handicapped. It would also be adverse to that part of the law which places emphasis on therapy.

The other option was an already overcrowded school with no space to operate efficiently. Considering our needs for therapies, if undesirable facilities are offered, we would be in jeopardy of losing their services.

We feel that the best, most economical and beneficial solution for our student population would be the construction of a ramp in the immediate future and, in the foreseeable future, an elevator.

In trying to comply with one aspect of the law, we must not let it supersede that which is most beneficial to the child. If our children are not able to get the needed therapies, the children would have to be released to go to the hospital for such therapies, and where would the child be then academically?

Instead of dismantling a totally well functioning and well established unit to move us to a location with an elevator, but lacking the more essential facilities, we should take the necessary steps to adjust the present location to our needs. In the long run, this would be more fruitful for the physically handicapped child.

I cannot conclude my talk without mentioning the individualized educational plan, the IEP, erroneous to some and valuable to others.

Since I was not familiar, at the time I came to the learning center, with any of the measuring tools in the IEP, it was, of course, helpful to me personally, since it helped me organize my thoughts and my approaches.

I do not teach the beginning classes, and most of my student population is promoted from the earlier group. The IEP's I receive are written within the learning center. However, my colleagues have received IEP's developed by the Committee on the Handicapped which they feel are illegible and academically not very helpful.

The teacher of special education is constantly reevaluating and modifying the educational approaches. It is nothing new to our learning center at Public School 85. In the past we had annual reports, aside from report cards and parent conferences.

These reports were sufficiently extensive and easy to understand. Each discipline filled out a report concerning the child, and the parents were brought in for a conference with the doctor, the teacher, and the therapist present.

Now the parents come in as a group. We explain the IEP and the purpose for which it was initiated. After explaining the IEP's generally, we break into small groups and we discuss with each parent the child's program, using the IEP as a guideline.

We have always evaluated our own children. It is this format that is now different. In the past, the teachers, therapists, doctors, and parents were included in discussing the child. However, although the annual report was probably more thorough and thus more help to the teachers and therapists, the parents did not sign the report, nor did they in fact see it, although its contents were generally discussed with the parents.

The fact that the parents are included and must sign the evaluation form is, I feel, an important factor in its favor. However, the present form is not an improvement in efficiency, nor is it clearer or more concise in its educational guidelines.

Thank you for listening to me. I hope I have in some way enlightened you on the problem of our particular population.

I only regret that I was not able to bring some of my children down so that you could meet the bright little citizens of our future. However, you are all invited to hear us sing at the Special Arts Festival at Columbia on Tuesday.

I would like to thank CEC, of which I am a member, for giving me this opportunity to express my views.

Mr. Simon. Thank you very much. We wish we could be here on Tuesday.

Mr. Biaggi. I will be here on Tuesday, and I will be at Columbia. My son is graduating.

Ms. Cartenuto. Then maybe you can come to Teachers College and hear us sing.

Mr. Biaggi. What time will that be?

Ms. Cartenuto. It will be between 9 and 12.

Mr. Biaggi. I will try to be there, I promise you.

Ms. Cartenuto. We will be happy to see you.

Mr. Simon. Ms. Travalino?

STATEMENT OF THERESA TRAVALINO, TEACHER, PUBLIC SCHOOL 32 OF THE BRONX

Ms. Travalino. Mr. Chairman, I do not have a prepared statement because I was told it was not necessary. I will try to be as quick as I can, using a few visual aids.

First, I would like to preface the statement with thoughts which just came to me. In fact, I am looking at this book which was printed prior to a public hearing on special education, and it lists the breakdown of special children in the New York area. The largest group is specific learning disabled, educable mentally retarded, and emotionally disturbed.

The first gentleman who spoke talked about child-find. You, obviously, will not have to look far for the deaf. You are not going to have to look far for the hard of hearing or the legally blind, the partially sighted, the physically handicapped, orthopedically or otherwise. You are not going to have to look far to find what is going to be coming into the school system in leaps and bounds through child-find for so-called special education.

Public Law 94–142 has fashioned our special education, and now because of constraints of physical plant and money, we are lopping off, pushing, pulling the educational process.

I am grateful to CEC for being here. I am grateful in a sense that my name came. I have lost much sleep. I am losing now a day, and my children are losing a day. I am sorry that you gentlemen have to leave.

I think that it is sad that a primary factor in the delivery of special services, the teacher, is represented only by two people on this panel. Without too much prior time to do a really good job of my colleagues and Gail's colleagues, this is where your educational process fails or succeeds, in the classroom with us.

I came early to hear the entire panel, and I will stay. It is not indicative of Mr. Gross, or anybody else, because he is a busy man, but two teachers from his school system are presenting testimony, and he has not stayed to hear us. Of course he can read it in the record, but he has not stayed.

Mr. Simon. I might just mention that we have had a great many teachers in other hearings.

Ms. Travalino. With Mr. Gross?

Mr. Simon. No.

Mr. Biaggi. In different parts of the country there has been substantial teacher input.

Ms. Travalino. Very well, then, let me proceed as quickly as possible.

My name is Theresa Travalino. I teach at P.S. 32 in the Bronx. I have a B.A. from Hunter in 1949, an M.S. from the College of New Rochelle in 1975, with a specialty in learning disabilities. I have a generic license now from New York State which says that I am a specialist in all special education.

I want to define the problem, also keeping in mind, again, since we deliver the services, what is paramount in all education, discipline problems, teacher reinforcement, and help and training.

The children who find their way into my classroom find their way into my classroom because they are adjudged brain injured, BI; or neurologically impaired, NI; or learning disabled, LD; or minimal brain damage, MBD.

In our school we have 12 special education classes in a learning center model, with other classes on the fourth, fifth, and sixth grade level. We have five so-called brain-injured in our classes, four educable mentally retarded, three emotionally disturbed. We have one crisis intervention teacher who services these classes.

We go to gym with the regular children. We eat lunch with the regular children. We have auditorium programs with the regular children. We can avail ourselves of the library services as a preparation period, art and music. We are mainstreamed, or so-called mainstreamed, in lunch or/and in auditorium, and in physical education.

This is a breakdown of my class. Very quickly, the performance IQ's is the red line. They are up high around the 100 mark. The verbal IQ's are spiky down around the borderline. Ego strengths—meaning can a child withstand, does he feel happy about himself, is he acting out—you can see are spiky and very much depressed.

Distractibility. I have one child with no distractibility; the rest are here.

Since there is less verbal talent, the less language and the less mediation the child has for dealing with his own problems and behavior.

One of the characteristics of this type of child, they are more behavioral. I don't know if I should read this into the record, since I don't have a prepared statement: hyperactivity, hyperdistractibility, impulsivity, perseveration, motor dysfunction. These are all disturbances of behavior and affect.

Under No. 3 we have defective self-concept which leads to low frustration tolerance, flight from challenge, overcompensation, control and manipulation of other children and the teacher, negativism or power struggle with the other children and the teacher. There is much so-called acting out behavior.

This middle segment, inadequate integrative, deals with the ability, or our cognitive domain mostly: memory deficits, conceptual handicaps, perceptual handicaps. Current research has shown that perceptual training does not help in the cognitive domain.

This has come out in the last 2 years in research. We, as teachers, knew this 7 or 8 years ago. So we in the classroom, only when the supervisor walked in were we doing perceptual training because we knew 7 years ago that it did not do much good.

Giving the child a special education, you will have to deal with the constraints of time and the physical climate. We have 380 minutes in a day. The lunch period is 50 minutes. The preparation period is 45 minutes. The breakfast program is 20 minutes. Dismissal is 10 minutes. In transit through the school building is 20 minutes. Cleanup is 5 minutes. This comes to 150 minutes. Subtract that, and we now have 230 minutes left of instruction time.

If we are to give a child social study and science and other subject areas for a total of 60 minutes, math for 45 minutes, and language arts, that is a total of 195 minutes.

If I divide that by 10 and give each child individual instruction, he will get 19.5 minutes of individual instruction. Then you think logically, what would I do with the other nine children. Therefore, the ideal of individualization is mythical.

Now we break them up into small groups. We will handle small groups. You have to remember that we have an acting out population that cannot read, that cannot handle themselves. It is amazing that we do as much as we do in the classroom.

We break them down into groups. Ideally we would love to have a full-time para. We now have part-time paras that come in at certain designated times. If a part-time para walks in to me when I have just had a disruptive thing happen in the classroom, when I must now talk the entire class down from this, the para must sit and wait.

If it takes me 20 minutes to talk the class down, I don't have that para for 50 minutes. I have her only for part of the time that she has been there. So, ideally, and what we should have, and do have in some schools, is a full-time para.

Class size, I have 10 children from 11 to 13. Experts through the years have said that the ideal class is eight. It went as high as 12 in

New York City about 4 years ago, and the parents had to sue to get these 2 extra children out.

I understand now in the city and in the State we can have overrides if our figures go down to below 80 percent. That is fine, but think logically. If I have 80 percent in 1 month, and some supervisor says, she can have two more children, the next 2 months I have those two plus my other two, I cannot get the other two out of the classroom.

These numbers of children to work with in special education are unwieldy. Yet we have these very large numbers for us, and it is extremely hard to deal with.

What do we do for these children? We have to give instruction. It is total curriculum, meaning home and school, ideally. It is attitudinal intervention so that we change the child, so that the child can grow from within as well as learn. We have to provide a therapeutic milieu, ideally.

The teacher's concerns now are class size, discipline, what to do with the acting-out child. Once this child becomes disturbed and begins to act out, you are to use nonpunitive methods for this child. The best method is to take the child and remove him, so that the other children with poor ego, poor language, and to whom a picture is worth a thousand words, do not model this child's actions.

We don't have this facility. We have one CIT in our school who also must do all of the paperwork and must do lunch duty and other things. So she is not available. When I need my crisis person, I cannot send a person in 5 minutes later because the child has gone wild. So crisis intervenors should be there. We should have more in a school with 12 special classes.

Support personnel—we have one guidance counselor in the school assigned to special education. Going back to my original class breakdown, I have five children whose educational workup recommends counseling. None are getting it. We have six children whose educational workout suggests language therapy—not speech articulation, but language. Two are getting it, and one is getting articulation speech. This is because of lack of money, lack of funds, lack of personnel.

Again, as I said, the guidance personnel: It is now the month of May, and I had one child seen last week by guidance finally. They are overworked. It is not a question that they do not want to; it is a question that they cannot.

We have a question of proper evaluation. Sometimes things are done in a hurry, and the child is adjudged one thing, and on overlay. He appeared to behave properly when the team saw him. Put him in with two or three acting out children, and he now begins to act emotionally handicapped as well as brain injured. Is he really NIEH, or is he acting abnormally because he is placed in an abnormal class, environmentally speaking?

If he has not been properly evaluated, we would like a timely reevaluation. The law does not permit this to happen with any speed because there are waiting periods. COH must be called in, and they must sit. There are children in the New York school system that are not placed yet. Therefore, these children who are being seen now, are not seen. In the meantime, they remain in the classroom and do not allow much teaching to go on, and much learning of the wrong adaptive patterns.

The IEP, as Gail said, is good in this respect; it has caused some teachers to sit and review their long and short term goals. My training taught me that I had to do this. I have to do it for myself, and I did it before the IEP.

What the IEP cannot do is list everything I do for this child. I would be writing for weeks. I don't have the time to do that. From that standpoint, the IEP can be a punitive tool for us in that we also don't get any extra time. There is no extra time given to us.

The IEP portion that should be written by COH, I have not had an IEP in the years that I have been teaching which has come to me with the COH portion filled out. We have done that part as well with no extra time.

In addition, some IEP's have crossed my path where the speech teacher sat and signed, and whatever other ancillary personnel. I can almost state that they may not have been there at the conference time because most schools do not have built-in conference time in the school days.

As I showed you before, there is no time. Yet most of your good private schools will dismiss their children for 1 hour per week prior to 3 o'clock, and sit and conference children. This has not been done in New York City. I don't know if it is a constraint of the law or an unwillingness on the part of the principals, et cetera.

What is the future thrust, and where is special education going. Is it all cosmetic?

There is so much paperwork, paperwork that comes across describing the learning center model at which I teach, telling not what will be, but telling about things that are going on when they are not. So don't believe everything you read.

Too much paperwork, an extreme amount. We have high-priced paper chasers and paper filler-outers. We have supervisors who spend an inordinate amount of time on paperwork. They are very highly paid and very highly skilled, but not to fill out papers. The CIT's are highly skilled, but not to fill out papers. I am, I hope, skilled, and yet I do an inordinate amount of paper filling-out.

Mr. Gross mentioned generic grouping and forced categorization. In other States they have tried to group these three not just in the learning center, but in the same classroom. Most of us, who have had an opportunity to work or see these three, do not want this. It does not work out.

They have sent us special personnel, such as music therapists, dance therapists, drug education people, have perceived the difference in our children. They also have perceived the difference at the beginning of the school year, when we have only eight or seven, how the discipline and the learning breaks down after the 7th, 8th, 9th, or 10th child comes in.

Umbrella licensure; I wonder if this is being done to conform to the law and get extra money. Are we now changing special education? Are we doing a 1984 number on special education? Are we now changing categories?

We are changing labels, or doing away with labels, for what reason; to get funding? If it is just to get funding, and we can still deliver the services the way they are supposed to be delivered, fine. But if it is to then change what has been written in books for the last 5, 6, or 7 years, then that is dangerous and does not help us as teachers to deliver the services.

Mr. SIMON. I don't mean to be cutting you short, but we are under time constraint.

Ms. TRAVALINO. No; this is it.

The least restrictive environment definition: What is least restrictive for some children, to place them into my class makes that the most restrictive environment to the other children in the class. Very little teaching goes on because you are serving one instead of nine.

The least restrictive environment for the other nine might have meant to leave that one other child in a different setting, or place him where he might be served best.

Mainstreaming: I have mainstreamed no one this year academically because if they could make it academically, they would not be in my class. Mainstreaming during lunch to me again constrains the physical plant. You are mainstreaming 50 special education children at a time with 300 regular education children, supervised by 2 people. Even if these children were all regular children, 2 people at lunchtime to supervise 300, I don't have to tell you what might go on. It takes me at least 20 minutes to talk them down from a period at lunch.

It takes me at least 20 minutes to mediate any fights that have happened during the lunch period because, again, physical plants in New York City don't have 16, 17, or 20 children in a gym program as they do in the suburbs. We have 20 special children, which is an unwieldly number. Yet, in the same school, two of my children are on the varsity basketball team.

I cannot tell you how happy I am at the growth I have seen in these children because they have been on this varsity basketball team with this same physical education teacher who can now do his job with that small group. Last year I had the captain of that varsity team in my classroom. In the regular gym program, because of the unwieldly number, there is much behavior problem and acting out.

So I say, in your child-find, since the Government has now changed the definition of retardation to a ceiling IQ of 70, and if the child has an IQ of 70 or above, he is not retarded, we are going to find more children with IQ's under 70 who are coming into special education. I don't know what they are going to be designated, learning disabled, or whatever.

If you are going to find children to put them in my class as it exists now, leave them in the regular classroom, serve them in other ways with resource rooms. Give us the personnel to do a job. Let's not rewrite the books to conform to the law. I thank you.

Mr. SIMON. Thank you.

Mr. Spidal?

[The prepared testimony of David A. Spidal follows:]

PREPARED TESTIMONY OF DAVID A. SPIDAL, PH.D., PRINCIPAL, NEW YORK SCHOOL FOR THE DEAF, WHITE PLAINS, N.Y.

Congressman Simon, other committee members, and friends. The impact of Public Law 94-142 is being felt both positively and negatively, as it relates to the deaf. Positively, the concepts of Individualized Educational Programs (I.E.P.), Least Restrictive Environment (L.R.E.), and Due Process are important. The emphasis of the rights of all handicapped to a free and appropriate education is praised. But, generalizations, interpretations, implementations and funding pose significant problems. It is these issues which pose some negative implications for the education of deaf children. These are the issues I will emphasize today.

Least Restrictive Environment (*L.R.E.*)

Frequently interpretation of this concept has been couched in terms which do not incorporate the whole child or the total needs. It is generalized that the educational component is limited to the school. This is not always true. The education of the deaf child must include his total environment. The deaf child does not learn by vicarious interaction with family, peers, radio and television as do hearing children. The deaf child learns by what he/she sees. In an environment where information is transmitted via speaking, the deaf child sees only the physical activities with no language connection. Thus to generalize that the home, hearing peers, the local hearing school, and so forth can provide the necessary language stimulation is a false or inaccurate generalization. Education involves communication and the least restrictive environment for the deaf must be "that environment, school, home, community, which can provide for the maximal visual stimulation of language". Let me give three examples which are common.

Example 1. Mary Sue, age 15, lives 18 miles from the school. She attends the school 180 days on a day basis, picked up by bus at 7:15, arrives at school at 8:00, departs from school at 2:15, arrives home at 3:00. Both parents work by necessity. There are no other deaf students in the community. Mary Sue stays in her room, watches a little television without knowing what is happening, becomes frustrated and bored. She is in "the least restrictive environment"?

Example 2. Tom, age 17 is "mainstreamed" from a school for the deaf to the local school. While at the school for the deaf, he was active in sports, clubs, was president of his class, was very popular with his peers at the school. Now he attends class, does average work, has no friends, participates in no activities, does not have a counselor or other support services who are equipped to work with the deaf. Is Tom in the "Least Restrictive Environment"?

Example 3. Ramos, age 12, lives in an area of the Bronx known as "Apache Village". The street life is dangerous, the family is poor, but loving, speak only Spanish. The three rooms of the apartment are not adequate for the eight members of the family. He attends school on a day basis, but is frequently absent. The weekends, holidays and summer are spent in the apartment because the family is afraid to let Ramos out by himself. Is he in the least restrictive environment? What will happen to him when he finishes school?

These examples are given to emphasize the point that the least restrictive environment must include the total environment, and the decision about such must be made by school officials, social service personnel and others knowledgeable of the unique needs of the deaf. The least restrictive environment must include the total needs of the child.

Public Law 94–142 is too often interpreted for "education" only. Services to children become fragmented because the need is "not educational". Too often I hear "that is a social service problem, not an educational problem." "The school is for education, not psychiatric counseling." "That problem is not the school's, but is the vocational rehabilitation problem." "You'll have to petition the family court for summer school; it's not your school's financial responsibility," "You operate a school, not a service agency." All of these comments indicate a lack of accountability and assistance to provide for services to the deaf child. Such comments, plus the examples given before, indicate "restrictions" not reduction of restrictions, a "brush-off" of responsibility for the individual, fragmented life into components rather than the "whole child."

The generalization for "handicapped children" indicates all are the same rather than individually different and unique.

One possible solution would be to establish commissions for the deaf within each state which would develop the guidelines for least restrictive environments for the deaf. We need to work for the whole child and not fragment the services into educational, social, emotional and physical.

Individualized Education Program (*I.E.P.*)

The I.E.P. has, in many instances, become a burden rather than a tool, a document of wishes, rather than an instrument for guiding services. What in theory is a great concept has become an albatross because of the generalizations to all handicaps and interpretations given to this concept. The I.E.P. development is time consuming, expensive, and questionable in its present format. It can be fragmented and not incorporate the full needs of the student.

The average I.E.P. of a deaf student for one year can be approximately thirty pages in length, require an average of six person hours to prepare, and can be duplicated as many as six times per year—for parents, committees on the handicapped, teachers' records, administration files and so forth. Additional funding for teacher time, support service time, and supplies have not been provided. As such, the time expended and the expense has taken away from the service and educational time to the children.

For the deaf child, especially the multi-handicapped deaf child, the total program must be a part of the educational plan, but there is too often a lack of funds and resources to meet the needs of the individual child. Also, there is no guarantee that the necessary and required support services and programs will be or can be made available. Too often the I.E.P. actually means "of what is available, how can the child be best educated." Permit me to site an example: Ramos (not his real name) a student living in "Apache Village" in the Bronx, attends on a day basis a day/residential school for the deaf. In evaluating his total needs, it is determined that Ramos should have: (a) year-long school, (b) constant social interaction with other deaf, (c) daily counselling, (d) life adjustment skills, (e) bilingual instruction, (f) daily tutoring and language/reading, (g) athletic programs to develop team concepts, (h) part-time vocational instruction. Of these eight needs, the school can only provide: (a) 180 days of school, not year-long schooling, (b) brief social interaction at lunchtime, not constant because he arrives at school at eight o'clock and must depart at 2:15 to receive transportation, and he is not permitted to live in the dormitory to participate in the residential program, (c) counseling twenty minutes a week because the school has only one counsellor for the 200 students, (d) a life adjustment skills curriculum which is a part of the program at the school, (e) all instruction in English because there are no available bilingual teachers, spanish speaking teachers, nor are there appropriate materials in spanish for his level of instruction, (f) no individualized tutoring because class loads are at a minimum of eight students to one teacher (standard in schools for the deaf), (g) no athletic programs because Ramos must go home at 2:15 to receive transportation and all athletic programs are after school, and two hours of vocational training per day with twenty students in the class with a teacher who is not prepared or educated to work with the deaf. The school and the parent feel that all of the items in the I.E.P. are essentials for educational success for Ramos, but only a few of the items could be provided for him. There are no other programs available that would provide more services than could be provided at the school.

The services and needs as presented in the I.E.P. are not available because of the lack of funds to provide such services and the lack of appropriately trained professionals.

Another student at the same school, age 16, is taking a college preparatory program. Her courses of study for the present year include English, Literature, Algebra, Remedial Math, Physical Education, Health, American History, and Speech Therapy. Speech Therapy is provided to her two times a week, alternating with Physical Education. Health Education is provided for a nine week block. Under Public Law 94–142, each subject area must have a statement of present level of performance, annual goals, and short-term goals. All materials used in the classroom instruction are specially prepared by the teachers to meet her language needs for instruction. Appropriate textbooks covering the important topics of each subject area are not available at her reading level. When all of the required information is prepared and put together for the year of instruction, the I.E.P., as a document which communicates, is twenty-five pages long for the year. During the planning conference, the parent was given a copy, the COH (Committee on the Handicapped) requested a copy, each classroom teacher had a copy of the I.E.P. for his/her subject and the central file had a copy. Thus, at the end of the planning conference, four copies were prepared. At the end of the year, the evaluation for the total I.E.P. was made on the administrative copy, and a duplicate copy was made for this COH and the parent. Thus, six copies of twenty-five pages were needed for one child for one year.

The following are recommendations for the I.E.P. and support services:

1. Redefine the Individualized Education Plan as a document to be developed at the school, held at the school, and to be viewed only at the school without copies being sent to all interested or other parties;

2. Allocate federal and state funds to see that the total needs of each child be met and remove the fragmentation of funding sources and responsibilities, i.e. mental health now separated from education which is separate from vocational program which is separate from other necessary services;

3. Require the establishment of state commissions for the deaf who would be given the responsibility to see that the ' total" needs of deaf children are met;

4. Establish federal grants for the preparation of mental health specialist, vocational teachers, secondary school teachers, bilingual teachers and others for full-time work with the deaf;

5. Provide federal funds to guarantee appropriate compensation for people who work with the deaf;

6. Review the total I.E.P. concept as it relates to students placed in special schools for the deaf;

7. Remove the generalizations from legislation and other documents which tend to classify all handicaps as similar with the same needs. The communication handicap of the deaf is much different than an orthopedic handicap, a mental handicap, a visual handicap, or other handicap.

Summary

The concepts in Public Law 94-142 relating to the least restrictive environment and the I.E.P. are the areas of greatest concern to those of us dedicated to working with deaf children. Frequently, the interpretation of least restrictive environment becomes in reality a most restrictive environment. The Individualized Education Plan for the deaf student frequently takes away from available time, services, and money available for educating and assisting the child, and in no way does the I.E.P. guarantee or provide a means of insuring that the needs of the deaf child are met.

STATEMENT OF DAVID A. SPIDAL, PH. D., PRINCIPAL, NEW YORK SCHOOL FOR THE DEAF, WHITE PLAINS, N.Y.

Mr. SPIDAL. I have copies of a paper which I would like to enter for the record; then make a short presentation.

Mr. SIMON. Your entire statement will be placed in the record, and we will appreciate it if you would summarize. Unfortunately, we will have to leave here at about noon, and we have two more panels to go through here.

Mr. SPIDAL. I will make my statement as brief and concise as possible, Congressman.

My specialty of work is with the deaf. I am representing that population with this testimony today.

I am proud and happy that you and your colleagues see deafness as a uniqueness, and this is demonstrated by having an interpreter here to make these conferences accessible to the deaf and hearing impaired. If you look around, this is probably the only special person that you had to bring to make the program accessible.

The point that I am making here is that the deaf are a unique population because their handicap is not with the mind or with the body, but their handicap basically is one of language development, language development which you and I have gotten through our sense of hearing over the years, and have developed into where we can sit and communicate via many modes.

We can sit at home and learn from radio, television. We can talk over the telephone. The deaf do not learn this way, through this vicarious experience. They need the specialty of people trained in the area. They need the support services that can deal with this unique problem of language and communication.

Public Law 94-142 has brought about some very positive aspects in terms of the deaf, but because of generalizations to all handicaps, because of interpretation of the law, and because of funding problems, we are running into more problems which are and could have an impact on the deaf.

We have heard about the latest restrictive environment, and in the paper I present there are several examples of least restrictive environments which are actually more restrictive for the deaf child, whereas with another type of handicapped child, it would be least restrictive.

The IEP also for the schools and programs for the deaf pose a real problem, mounting paperwork, no additional time, no additional funding. All of these factors are taking away from services to children.

Since the implementation of Public Law 94–142, I think children are losing more and more because of the additional time and expense involved in the implementation. Whereas the aspects, the conditions, the learning was taking place, now we are taking some of the money and time used for that to fulfill the obligations of the law.

Also, I want to emphasize a factor connected to this generalization problem, generalization of the handicapped, rules and regulations which apply to the handicapped, with people involved in making decisions coming up with interpretations that really do not understand the situation.

I would recommend that under the law, or under the interpretation of the law, there be commissions for the deaf established in each State coordinated by BEH or other such organizations, which would be responsible to see that the maximum educational programs were carried out for the deaf throughout the Nation.

Another large area of concern to me and other educators of the deaf is the fact that there are not adequate support services of people who are trained and knowledgeable of the deaf. To have the physical therapist is fine, but that physical therapist should also be trained in working with the deaf. To have vocational teachers is fine, but there are very few who are trained as teachers of the deaf. There are few bilingual teachers to help us with the Spanish-speaking deaf.

With a crash program, such as we had early in the 1960's for training teachers of the deaf, it might be possible to teach these specialty people so that they would be available to work with the deaf.

The last point I want to make at this time is that we need to look at the total child, not at the education. The child is a total human being, and we have the tendency to fragment the services by saying, that is not educational, and pushing it aside. That is vocational rehabilitation's responsibility. That is mental health's responsibility. Soon we have the child's life all fragmented. I believe all of these things have to come together to provide optimal and maximum services to deaf children. I cannot speak for the others at this time. Thank you.

Mr. SIMON. May I do this. I hate to impose on the three of you, but I would like to toss some questions at you, and if you could respond in writing, we could then enter the answers in the record. Send the letters to Congressman Simon, Washington, D.C.

Ms. Cartenuto, in your case you talked about a ramp, and maybe you are talking about more than one ramp. I am just curious about what kind of cost we are talking about here. I assume that you are talking about a fairly simple ramp.

Second, you mentioned that you attended the very school where you are teaching. I would be interested in a comparison of that school now and when you were there, and then what you would like to see in that school 10 years from now.

Ms. Travalino, I was particularly concerned with the counseling that is not taking place, as you mentioned, and which should be taking place. I am interested in why it isn't, who should be counseling, and any further information that you want to provide there.

Mr. Spidal, if you can expand on your idea of commissions for the deaf. No. 2 any reaction you have to suggestions that have been made for the use of the loop, I am sure you know what I am referring to, for the hearing impaired. It is something that we ought to be taking a harder look at.

Mr. **Spidal.** May I expand on that also?

Mr. **Simon.** Yes.

I am sorry that I do not have time to enter into a dialog with all three of you because I would like to very, very much. I appreciate your testimony, and I appreciate you taking the time to be with us here today.

Mr. **Spidal.** Thank you, Mr. Chairman.

Mr. **Simon.** Thank you very much.

The next panel is Patricia Kaylor, Doris Grell, Tracy Grell, Herb Rosenblatt, and Otis Bryant. I understand that Tracy and Otis are Special Olympians, and we are particularly pleased to have them here.

Ms. **Kaylor.** Mr. Simon, we were just talking, and we really wonder if it would be possible for us to come back at another time when Mr. Biaggi and Mr. Weiss are here. Because of the definite time restraints, we do not believe that we could be as effective as we might be at a later date.

Mr. **Simon.** We can do that. I am sure we will hold other hearings in New York. Obviously, we hold hearings most frequently in Washington, but it would be much more convenient for you to have another hearing here at some point. I am sure we will be back, and we can arrange to do that.

Ms. **Kaylor.** We would prefer that at this time, I believe.

Mr. Simon, we have talked, and if it is not possible to have the hearing here, we could go to Washington, so whatever can be arranged that would be most convenient.

Mr. **Simon.** We will work that out for panel 4.

Tracy and Otis, can you tell me what you do in the Special Olympics?

Tracy, what do you do in the Special Olympics?

Tracy Grell. Swimming.

Mr. **Simon.** Ms. Grell, what are you going to get your trophy for?

Tracy Grell. I will have a trophy for all-round female athlete.

Mr. **Simon.** Good for you, Tracy. We are very pleased to have you here, and we are very proud of you.

Otis, what do you do?

Otis Bryant. I am a basketball player. I play for Mr. Herb Rosenblatt. In the summer games, I do track and field, softball, a lot of running. Right now we are going to have a bike-a-thon where we are going to get together a group of guys to go to Washington. We are going to ride to Washington from the Bronx, and I hope to see you there.

Mr. **Simon.** We hope so, too.

We will work out something for panel 4, either here or in Washington. The staff will have to work that out, and we will let you know what the situation is.

Panel 5, what is your pleasure? Do you want to proceed with panel 5 here at this point?

Ms. HEPNER. Do you have time for us?

Mr. SIMON. Certainly.

Janet Scotland, Education Law Center of Philadelphia; Robin Willner, Education Priorities Panel of New York; and Paula Hepner, Advocates for Children of New York.

Ms. Stotland, we are happy to have you, and we look forward to your testimony.

[The prepared statement of Janet F. Stotland follows:]

PREPARED STATEMENT OF JANET F. STOTLAND, ESQ., MANAGING ATTORNEY, EDUCATION LAW CENTER, PHILADELPHIA, PA.

Mr. Chairman, members of the committee, I appreciate this opportunity to talk with you this morning regarding matters of vital importance to the parents and children my organization represents.

I am the Managing Attorney of the Pennsylvania office of the Education Law Center, Inc., a nonprofit public interest law firm which provides free legal assistance to parents and students who encounter difficulties with the public education system in Pennsylvania. Our sister office, which is located in Newark, provides similar services in the state of New Jersey. The Pennsylvania office of ELC is funded primarily by the Ford Foundation and the Developmental Disabilities Advocacy Network, the Pennsylvania protection and advocacy system.

Although ELC's concerns and activities extend to all issues which affect the quality and availability of public education services, a substantial portion of our resources are focused on securing quality special education services for handicapped youngsters. Since we began operations in Pennsylvania in 1975, we have advised, provided information to, or formally represented literally tens of thousands of parents and handicapped children.

Each week our office receives approximately 50 calls from parents and parent advocates throughout Pennsylvania. We also travel throughout the state, and in the last few months staff have met with parents and education providers in Erie, Scranton, Lancaster, York, Pittsburgh, Pottsville, and Harrisburg. The information and perspective obtained as a result of these contacts and experiences serve as the "data base" for my comments this morning.

Many of the problems encountered by consumers seeking quality special education services in Pennsylvania fall roughly into two categories. The first category includes state-wide policies or statutes or district-wide practices which on their face or as applied deny services mandated by Public Law 94-142. These problems could be called "systemic" impediments to compliance with the Act.

The second group of grievances focuses on the denial of clearly mandated services to individual consumers caused by the failure or refusal of a particular school district or intermediate unit to comply with the provisions of the Act. These problems are as various as the 505 School Districts and 29 Intermediate Units in Pennsylvania, and include such matters as the denial of physical therapy to a needy student or the refusal of School District to provide a timely and comprehensive Individualized Education Program. I do not include in this category those factual disputes which are properly the subject of the due process mechanism. Rather, I am referring to incidents in which a child's need for and entitlement to a particular service under the Act are clear, but where the LEA simply refuses to provide it.

The real focus of my remarks, however, is not just to recount the number and nature of these grievances. It is to emphasize that both types of problems—systemic denials and violations of the rights of individuals—could and should be resolvable by recourse to effective state and federal administrative procedures. However, because of the failure of the Bureau of Education for the Handicapped to itself provide and to insure that the State provides such a mechanism, parents have been left either with no recourse whatever, or, at best, and when they can afford it, with litigating these issues in Court.

Although the right to turn to the courts for resolution of individual grievances provided by section 1415 of the Act is essential to the over-all enforcement of Public Law 94–142, it is not and was not intended to be a substitute for active and aggressive monitoring and enforcement by BEH. In fact, unless BEH begins to provide technical assistance and aggressive monitoring and enforcement as regards systemic violations, and unless that agency forces Pennsylvania to provide an effective procedure for resolution of individual complaints, the rights guaranteed by the Act will remain mere paper promises for a large number of handicapped children.

That BEH has not performed this task in the past, at least so far as Pennsylvania is concerned, can be illustrated by my office's futile efforts to secure BEH's assistance as regards systemic problems. Moreover, although we and many others have on numerous occasions made BEH aware of the limitations of the Pennsylvania Office of Regional Review, our station's complaint and monitoring office, it has failed to demand and to secure necessary improvements in this system. As a result parents and students in Pennsylvania are still without any effective means of resolving their individual complaints.

I. BEH HAS REFUSED TO RESPOND TO REQUESTS FOR RESOLUTION OF SYSTEMIC PROBLEMS

1. The Pennsylvania "180 day rule"

In the Fall of 1977, the parents of 3 severely handicapped students approached ELC with the following problem. Each child demonstrated the following unusual learning characteristics—each had a propensity to lose skills and behaviors when his education program was interrupted for a substantial period and each had a limited ability to recoup these losses after his program resumed. As a result, the children were spending the 180 day school year making slow but steady progress, only to lose those gains during the summer break and to spend the subsequent year (or a good portion of it) merely regaining previous levels.

The educational programs of these children were limited to 180 days by virtue of an undisputed state-wide policy of the Department of Education, namely that the Department would not provide or fund the provision of any special education program for any child which exceeded 180 days per year, the length of the school year for the nonhandicapped. The policy also prevented the parents of handicapped children from using the existing special education due process procedures to establish their children's learning patterns and to secure a decision from an independent hearing officer mandating an extended school year for children who demonstrated this regression/recoupment problem.

As counsel for these children and their parents, I concluded that this policy was in violation of Public Law 94–142 in that it precluded consideration of the individual needs of certain handicapped children and, therefore, denied them programs which met their "unique needs." In January, 1978, a lawsuit captioned *Armstrong* v. *Kline*, was filed on behalf of these children against the Department and the children's local school district.

In an effort to resolve the dispute without the need for extensive litigation, I then contacted BEH and sought a ruling regarding the legality of this policy under Public Law 94–142. At first I was told that a policy was being drafted by BEH and a ruling would be forthcoming during the summer of 1978. Finally, when no such ruling was issued, in January, 1979, I wrote BEH informing the Bureau that trial had been set for March, 1979, that the problem was one of national importance. I again requested a policy ruling. On March 6, 1979, I received a letter from BEH stating, "as you are aware, we are working co-jointly with the Office for Civil Rights (OCR) in developing a policy interpretation on this major topic for release in the very near future."

Unfortunately, to date, no such ruling has yet been released. The *Armstrong* decision, which was issued by the Court in June, 1979 after a two week trial, is currently on appeal to the Third Circuit Court of Appeals. Lawsuits are pending in Mississippi, Louisiana, Ohio, Michigan, and Georgia, and since September, 1979, I have received requests for technical assistance from more than 30 states with *Armstrong* problems. Although the United States filed an amicus brief with the Third Circuit supporting our position, the absence of a formal ruling from BEH has left advocates, parents, and school officials in other states without needed guidance. The result has been the proliferation of expensive and time consuming court cases regarding this issue, and, of course, a tragic delay in providing these needed programs to eligible handicapped children.

2. Denial of services to language minority handicapped or thought-to-be-handicapped residents of the Philadelphia School District

In August, 1978, ELC filed a class action administrative complaint with Office for Civil Rights and the State Office of Regional Review alleging that the Philadelphia School District was denying language minority thought-to-be-handicapped residents evaluations which took account of their limited English language facility and, further, that the District was denying identified handicapped language minority children special education programs with adequate bilingual support services. These practices were alleged to be in violation of Public Law 94–142, section 504 of the Rehabilitation Act, and Title VI of the Civil Rights Acts of 1964.

When no response was obtained from the Office of Regional Review, in March, 1979, an identical complaint was filed with BEH. Although in March, 1980, a ruling was finally obtained from OCR upholding the position of the complainants, to date no response has yet been received from BEH.

3. Statutory maximum on reimbursement of tuition for handicapped children placed by the department and the local school district in approved private schools

Pennsylvania statutes and regulations permit the placement of a handicapped child in a Department approved private school only in instances when no appropriate public placement is available and the private placement is the least restrictive which is appropriate for the child. However, State law also provides that such placement will only be funded up to a set amount which, for a child with a single handicap in a residential placement, is $9,500 per year.

Center staff were approached by a number of parents whose children either had been placed in an Approved Private School and had not been fully funded, or whose children could not obtain placements because the statutory maximum would not be sufficient to cover the cost of their appropriate educations. In August, 1979, ELC staff filed a class action Administrative Complaint alleging violations of section 504 and 94–142 with OCR and the State Office of Regional Review, respectively. When the office of Regional Review did not respond, in December, 1979, we filed an identical complaint with BEH requesting that office to rule. However, when no relief had been forthcoming from any agency, we were forced to file a class action lawsuit. *Gittelman* v. *Scanlon*, in federal district court. The case is currently in the discovery stage.

In April, 1980, OCR issued a ruling finding for complainants and granting partial relief; to date; no written ruling has been received from BEH.

These 3 problems illustrate the continuing difficulty experienced by parents and advocates seeking to resolve disputes regarding state-wide or district-wide policies and practices affecting thousands of children and parents throughout Pennsylvania. Even in instances such as these, when advocates have raised the problems to the attention of the BEH, no investigation or enforcement whatever has been obtained.

Obviously, BEH's responsibility is even more extensive that a mere obligation to timely respond to issues raised by parents and their advocates. Section 1416 of the Act requires the Commissioner to take action to correct substantial violations of the Act and section 1418 requires him to "measure and evaluate the * * * effectiveness of State efforts to assure the free appropriate public education of all handicapped children." As is demonstrated by the example presented below, even when the problem is as crucial as Pennsylvania's failure to provide an effective procedure for monitoring and for reviewing, investigating, and acting on complaints raised by parents and parent advocates, BEH has failed to provide any meaningful relief.

II. BEH FAILED TO REQUIRE PENNSYLVANIA TO PROVIDE AN ADEQUATE MECHANISM FOR MONITORING COMPLIANCE AND ACTING ON COMPLAINTS

At 45 C.F.R. sections 121a.601 and 602, each state agency is required to "develop procedures (including specific timelines) for monitoring and evaluating public agencies involved in the education of handicapped children," and to "adopt effective procedures for reviewing, investigating, and acting on any allegations of substance of actions that are contrary to the requirements of (Public Law 94–142)." In Pennsylvania, the agency which purports to fulfill these mandates is the Office of Regional Review.

In the 1980 Annual Program Plan, the Pennsylvania Department of Education outlined its procedures for monitoring and complaint management. Even on the face of the document the plan is defective in that there are no time frames for any of the actions described. The Final BEH Program Administrative Review report, issued in July 1979, subsequent to the submission of Pennsylvania's 1980 Plan, found Pennsylvania's monitoring procedures in non-compliance.

Although the SEA has been developing polices and procedures for comprehensive monitoring consistent with federal statutory and regulatory requirements, at the time of the BEH visit, there was not evidence of formal monitoring by the SEA of all Public Law 94-142 requirements, including on-site visits, written reports, recordkeeping and follow-up. Monitoring by State monitoring teams has been projected to begin in September 1979. While program monitoring of the State-operated/State-supported programs was acknowledged by the BEH team, there was some concern that not all Public Law 94-142 requirements were being adequately monitored.

The practice noted was not consistent with the federal requirements and provisions in the Pennsylvania fiscal year 1978 and 1979 Annual Program Plans. (Final report at p. 11.)

The corrective actions proposed by the agency, however, were extremely general in nature.

Corrective actions

1. The SEA must demonstrate that corrective actions have been taken to eliminate the problems related to Statewide monitoring of all Public Law 94-142 requirements in all IUs, LEAs and State-operated/State-supported programs.

Timelines

By October 15, 1979, the Pennsylvania State Department of Education must submit to the BEH documentation that the corrective actions listed above been carried out [sic]. (Final report at p. 11.)

It is the experience of parents and parent advocates throughout the State that now, more than a year after BEH's Program Administration Review, the Office of Regional Review does little if anything to monitor individual school district and intermediate unit's compliance with the requirements of Public Law 94-142; moreover, even when complaints are received from parents, the office makes few efforts if any to investigate and insure remediation.

For example a parent in the northeast portion of the State sought to bring a parent advocate with her to an IEP conference. Although the state regulations clearly provided that "any person the parent wants to attend" may be present, the school district refused to admit the advocate. Since this action was a clear violation of existing regulations, the parent filed a complaint with the Office of Regional Review.

Instead of resolving the problem in the parent's favor and requiring the School District to comply, the Reviewer ordered the parent to utilize due process procedures, despite the fact that there was no factual dispute whatever. This type of response is typical of that received by parents throughout the State in a wide variety of situations.

Public Law 94-142 and its regulatory scheme will, if enforced, provide handicapped children with an opportunity to obtain a quality public education with resulting advantages to those children and to society as a whole. Parents and parent advocates, however, cannot obtain compliance with Public Law 94-142 without the vigorous support of BEH. Although ELC has been able to respond on a limited basis to requests for assistance, even with our help parents have been unable to obtain adequate responses from BEH, even on issues of state-wide or national impact. The refusal of BEH to respond has forced the Center to turn to the Courts to obtain relief for our clients, a time consuming, expensive and limited remedy at best. This situation must change, and it must change soon.

STATEMENT OF JANET F. STOTLAND, MANAGING ATTORNEY, EDUCATION LAW CENTER, PHILADELPHIA, PA.

Ms. STOTLAND. I appreciate the opportunity to be here, and I ask that my statement be incorporated as a part of the record. I will simply focus on those aspects of that statement which are most important to me.

Mr. SIMON. It will be entered in the record at this point.

Ms. Stotland. I am the managing attorney of the Pennsylvania office of the Education Law Center. The Education Law Center is an independent, nonprofit, public interest law firm which provides free legal assistance to parents and students who encounter difficulties with the public education system in Pennsylvania. We are funded through a variety of Federal and private foundation grants.

Since 1975, when we began operating in Pennsylvania, we have been heavily involved with efforts to secure quality education services for the handicapped.

ELC's staff have utilized every conceivable technique to achieve this goal, from preparation and distribution of more than 30,000 "How To Do It" manuals for parents of handicapped children and for the students themselves so that they can understand the system and implement their rights to class action litigation throughout Pennsylvania, such as the *Armstrong* v. *Kline* lawsuit which has been frequently discussed, and which resulted in a Federal court order mandating the provision of an extended school program for certain handicapped students.

During these years, we have spoken with, advised, and represented tens of thousands of parents and children, and it is that experience of dealing on a day-to-day basis with parents and students which is the basis for the perspective and the comments that I have this morning.

Public Law 94–142 has undisputably brought about significant gains for the handicapped in Pennsylvania. It has extended and clarified the rights already in Pennsylvania State laws as a result of the *Clark* decision, and certain other criminal lawsuits that were brought there.

Most notably, the implementation of the IEP requirement and the mandate that related services be provided whenever needed for a child to benefit from special education have provided tools for insuring quality programs for the handicapped.

Problems, however, still exist, and problems in fact abound. Parents and their advocates are daily struggling to convert the paper promises of 94–142 into services for handicapped children who need those services.

Essentially those problems fall, or could be seen to fall, roughly into two major areas: First of all, statewide or districtwide policies and practices which block the delivery of mandated services, and second, the refusals or failures of individual school districts to provide rights for individual parents and children.

The first could be thought to be systemic impediments in the delivery of services, while the latter is the every day grungy business of seeing that individual parents and children get what they are entitled to under the act.

As I mentioned earlier, the Education Law Center has, in fact, increasingly been involved with seeking from Federal and State courts rulings regarding the legality of certain acts and the solution of certain problems, be they individual or systemic.

For example, in 1975 in the lawsuit of *Katherin D.* v. *Pittinger*, ELC secured a body of regulations in a State which extended the appropriate program requirements to the nonretarded, the retarded having been protected by the original *Clark* decision.

In 1977, as a result of a lawsuit entitled, *Kenneth J.* v. *Kline*—as you can see, we have run the gamut of Secretaries of Education in all these lawsuits—we obtained regulations protecting the handicapped from exclusion from programing through disciplinary procedures which did not take account of the children's handicapping conditions.

In 1979, as I mentioned, we obtained a Federal court order which is now pending appeal before the Third Circuit Court of Appeals, which extended the school year for certain handicapped children who otherwise would have been condemned to programs which, because of their arbitrary limit of 180 days per year, virtually guaranteed that these children would have spent their adult lives in institutions or in other restrictive settings.

This record of successful litigation, however, rather than being a source of pride to us and to our clients, is rather a proof of the breakdown of the enforcement system provided for under the act. It should not require, and does not require, resort to the courts to establish or implement the requirements of Public Law 94–142. This brings me to the focus of my remarks.

If parents and students, rich and poor, black and white, rural and urban, are each to truly obtain their rights under the act, then there must be effective State and Federal administrative procedures to which they can turn when these rights are denied. These procedures must provide relief for both the individual consumers when one is faced with a systemic barrier to service delivery.

The key to any such system is the Bureau for the Education of the Handicapped, the Federal agency charged with the responsibility for implementing and monitoring the act. To date, however, BEH has not assumed this role. Advocates and parents in Pennsylvania and throughout the Nation have repeatedly turned to BEH for guidance, interpretation, and enforcement of the provisions of the act, but have virtually always been met with silence or delay. This cannot continue.

Only a few, usually the most affluent, have access to the courts. Litigation, while it provides a way for lawyers to make a living, is both exhausting and inefficient, and is not the route by which these decisions should be made. However, until the situation changes, consumers will have no other object but to continue to turn to those courts for resolution.

What we need is an efficient Federal mechanism for intepreting, monitoring, and enforcing the provisions of this act and, as is required by the Public Law 94–142 regulations, an effective State mechanism which is charged with, and which fills the mandate to hear, review, and act on individual complaints. As I said, this does not exist in Pennsylvania, and it is also the job of BEH to insure that the State mechanism does exist.

The problem is one of national dimensions. It is not just Pennsylvania and advocates in Pennsylvania who have been encountering these difficulties. Approximately 1½ years ago, ELC joined with advocacy groups in 11 of the States and formed the Education Advocates Coalition.

Each of these consumer and advocacy groups knew and expressed the problems of their individual States, and some of them overlapped and some of them were different. But every group agreed that the key to monitoring enforcement and implementation lies with BEH, and that none of us had found satisfaction in our efforts to gain this guidance from BEH.

Therefore, in April 1980, the coalition issued a report which focused on the 10 key problems that had emerged in the 11 coalition States, and also focused on the fact that none of these problems would be adequately remedied unless BEH began to do its job of giving guidance, of doing affirmative and aggressive monitoring, and of providing an effective enforcement mechanism.

The coalition report set out, I believe, 10 potential remedies to that problem, focusing on BEH. I have a copy of the report with me today, if you or the others of the committee do not have one. I commend to you that report and the remedies in it.

Mr. SIMON. We do have it. In fact, I have just sent a letter to Secretary Hufstedler calling her attention to the report. She has announced that she will form a task force to take a look at this whole matter. I am not aware yet of the results of the task force.

Ms. STOTLAND. That is certainly a good sign.

I want to conclude by saying this: The problems, the loss of services, and the damage to children resulting from that loss of services is going on daily. We cannot begin to cope with this problem unless BEH, and unless State enforcement agencies are available.

So it is my hope that whatever is undertaken in response to the coalition's report will be speedy. Thank you.

Mr. SIMON. Thank you.

We will now call on Robin Willner, Education Priorities Panel.

[The prepared statement of Robin Willner follows:]

PREPARED STATEMENT OF ROBIN WILLNER, EDUCATION PRIORITIES PANEL, NEW YORK

Good morning, I am Robin Willner, representing the Educational Priorities Panel. The EPP is a coalition of 25 major New York City parents and civic organizations which formed in 1976 as a fiscal watchdog to ensure that budget cuts at the Board of Education are made in administrative areas and that instructional services are preserved.

Since the beginning of the New York City fiscal crisis, which provided the impetus for the EPP's formation, we have seen that, unfortunately, New York City's problems were only the harbinger of an urban crisis of national dimensions. Since then, funding shortages have caused schools to close and massive layoffs in Yonkers, Cincinnati, Cleveland, and Chicago. During the same period, school systems are struggling with the fiscal implications of the mandates imposed by Public Law 94–142, the Education for all Handicapped Children Law. There is no question of our moral obligation to provide an appropriate education to all children. However, in a period of severe budget constraints and a growing "taxpayer revolt", we cannot discuss services without discussing their funding.

The EPP is in the midst of a survey of the fiscal impact of Public Law 94–142 on large urban school districts. We are collecting data from 18 major U.S. cities and we will provide the subcommittee with the final report this summer. However, at this time, I would like to discuss the situation in New York City, remembering that, although our problems may be magnified, they reflect those that are being felt in all urban school systems in the nation.

New York City's fiscal problems of the past five years have created immense burdens for the Board of Education. And while all City agencies have had to absorb substantial budget cuts, the education budget has been a primary focus of these reductions. Only the uniformed services and the Board of Education have significant amounts of City tax levy dollars remaining in their budgets. From 1975–77, uniformed personnel decreased 20 percent while education personnel decreased 22.6 percent. It is these City dollars (50 percent of the Board's budget) that are in increasingly short supply as New York City moves towards a balanced budget by fiscal year 1982.

Since 1975, the education budget has increased only by 8 percent. This does not begin to cover the increased cost of providing services—teacher salaries increased more than 12 percent in just the last two years, double-digit inflation has affected the cost of all supplies, and energy costs have skyrocketed. At the same time, tax levy expenditures for the Division of Special Education have increased 80 percent, since 1975, or 10 times faster than total expenditures. In addition, while Special Education represented 7.8 percent of the Board's tax levy budget 5 years ago, they now account for 13 percent of expenditures. In three years, 1975 to 1978, the Special Education population increased 19.6 percent from 38,800 to 46,400. In the next three-year period, from 1978 to 1981, the Board of Education projects more than a 100 percent increase to 93,000 students. This means that the rate of placement has quadrupled.

However, revenues have not kept pace with expenditures. For example, although expenditures for Special Education increased more than 30 percent in the last year, State revenues only increased 11 percent.

New York City's obligation to provide an appropriate education for all children is now reinforced by the judicial decision in the *Jose P.* case. The Board of Education is now bound to abide by a strict calendar for full implementation of the mandates of Public Law 94–142, although the Federal Government is not providing significant funding for these Special Education services. According to the Federal legislation, Congress is authorized to phase in funding as a percentage of the national average per capita expenditure for education. The authorization provides for reimbursement at 20 percent for 1980, 30 percent for 1981 and 40 percent for 1982. Despite the authorization, this year's appropriation was restricted to 12 percent. For 1981, if funding is again held to 12 percent, instead of the authorization level of 30 percent New York City will lose approximately $257 for each child receiving Special Education. Using projections for the number of children in Special Education by May, 1980, this represents $23,901,000 for 93,000 children.

In addition to the level of appropriation, the formula itself contains a basic inequity. The funding formula has been restricted to reflect the average cost of education for all children (approximately $1,430) rather than the average per capita expenditure for Special Education services. In New York State, according to State Education Department studies, it costs three times more to educate a handicapped pupil than a non-handicapped pupil, which in New York is $2,100, not $1,430. The formula is not weighted to reflect either regional cost differences or the concentration of Special Education students in urban areas. According to the Division of Special Education, the New York City Board of Education actually spent an average of $6,300 per student during fiscal year 1979.

This morning, the Mayor is proposing a $98 million reduction in the Board of Education budget after funding fixed cost increases and mandated services. The suggested actions to implement this budget cut will devastate instructional services. And the budget is predicated upon receipt of Federal funds which may be optimistic, considering the proposals for balancing the Federal budget that are being discussed. The truth is that these Federal budget expenses are simply being shifted to local tax bases. The Federal government cannot maintain any credibility with taxpayers if it continues to mandate services at local expense. New York City cannot meet its commitment to Congress and this itself removes revenues that had been included in our financial plan. New York City will struggle to provide appropriate services to all of our children. The EPP will continue to identify possible administrative savings, innovative suggestions for cost savings without hurting instructional services, and to monitor management practices at 110 Livingston Street. However, the Federal government must do its part. Congress must appropriate a level of funding for Public Law 94–142 which is commensurate with the services which are required by these children who can wait no longer.

STATEMENT OF ROBIN WILLNER, EDUCATION PRIORITIES PANEL, NEW YORK

Ms. WILLNER. Good morning. I am Robin Willner, representing the Education Priorities Panel.

Mr. SIMON. If you could enter your statement for the record, and then summarize it. I hate to do that to you, but we are having a time problem here.

Ms. WILLNER. It is a very short statement.

Mr. SIMON. Why don't you proceed, then, and we will see how we do.

Ms. WILLNER. The EPP is a coalition of 25 major New York City parent and civic organizations which formed in 1976 as a fiscal watchdog to insure that budget cuts at the board of education are made in administrative areas and that instructional services are preserved.

I am glad that other people are going to be discussing the implementation of the law, but we would just like to touch on some of the fiscal issues.

Since the beginning of the New York City fiscal crisis, which provided the impetus for the EPP's formation, we have seen that, unfortunately, New York City's problems were only the harbinger of an urban crisis of national dimensions. Since then, funding shortages have caused schools to close and massive layoffs in Yonkers, Cincinnati, Cleveland, and Chicago.

During the same period, school systems are struggling with the fiscal implications of the mandates imposed by Public Law 94–142, the Education for All Handicapped Children law. There is no question of our moral obligation to provide an appropriate education to all our children. However, in a period of severe budget constraints and a growing taxpayer revolt, we cannot discuss services without discussing their funding.

The EPP is in the midst of a survey of the fiscal impact of Public Law 94–142 on large urban school districts. We are collecting data from 18 major U.S. cities and we will provide the subcommittee with the final report this summer. However, at this time, I would like to discuss the situation in New York, remembering that although our problems may be magnified, they reflect those that are being felt in all urban school systems in the Nation.

New York City's fiscal problems of the past 5 years have created immense burdens for the board of education, and while all city agencies have had to absorb substantial budget cuts, the education budget has been a primary focus of these reductions. Only the uniformed services and the board of education have significant amounts of city tax levy dollars remaining in their budgets.

From 1975 to 1977, uniformed personnel decreased 20 percent while education personnel decreased by 22.6 percent. It is these city dollars that are in increasingly short supply as New York City moves toward a balanced budget by fiscal year 1982.

Since 1975, the education budget has increased only by 8 percent. This does not begin to cover the increased cost of providing services. Teacher salaries increased more than 12 percent in just the last 2 years, double-digit inflation has affected the cost of all supplies, and energy costs have skyrocketed.

At the same time, tax levy expenditures for the division of special education have increased 80 percent since 1975, or 10 times faster than total expenditures. In addition, while special education represented 7.8 percent of the board's tax levy budget 5 years ago, they now account for 13 percent of expenditures. In 3 years, 1975 to 1978, the special education population increased 19.6 percent, from 38,800 students to 46,000 students.

In the next 3-year period, from 1978 to 1981, the board of education projects more than a 100-percent increase to 93,000 students. This means that the rate of placement has quadrupled.

However, revenues have not kept pace with expenditures. For example, although expenditures for special education increased more than 30 percent in the last year, State revenues only increased 11 percent.

New York City's obligation to provide an appropriate education for all children is now reinforced by the judicial decision in the *Jose P.* case. The board of education is now bound to abide by a strict calendar for full implementation of the mandates of Public Law 94-142, although the Federal Government is not providing significant funding for these special education services.

According to the Federal legislation, Congress is authorized to phase in funding as a percentage of the national average per capita expenditure for education. The authorization provides for reimbursement at 20 percent for 1980, 30 percent for 1981, and 40 percent for 1982. Despite the authorization, this year's appropriation was restricted to 12 percent.

For 1981, if funding is again held to 12 percent, and if it does not lower as we have heard, instead of the authorization level of 30 percent, New York City will lose approximately $257 for each child receiving special education. Using projections for the number of children in special education by May 1980, this represents $23,901,000 for 93,000 children.

In addition to the level of appropriation, the formula itself contains a basic inequity. The funding formula has been restricted to reflect the average cost of education for all children rather than the average per capita expenditure for special education services.

In New York State, according to State education department studies, it costs three times more to educate a handicapped pupil than a nonhandicapped pupil, which in New York is $2,100, not $1,430.

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This morning, the mayor is proposing a $98 million reduction in the board of education budget after funding fixed cost increases and mandated services. The suggested actions to implement this budget cut will devastate instructional services; and the budget is predicated upon receipt of Federal funds which may be optimistic, considering the proposals for balancing the Federal budget that are being discussed.

The truth is that these Federal budget expenses are simply being shifted to local tax bases. The Federal Government cannot maintain any credibility with taxpayers if it continues to mandate services at local expense. New York City cannot meet its commitment to Congress and the legal requirements that we balance our budget if the revenues that have been included in our financial plan are removed by the Federal Government.

New York City will struggle to provide appropriate services to all of our children. The EPP will continue to identify possible administrative savings, innovative suggestions for cost savings without hurting instructional services; and to monitor management practices at the board of education.

However, the Federal Government must do its part. Congress must appropriate a level of funding for Public Law 94-142 which is commensurate with the services which are required by these children who can wait no longer. Thank you.

Mr. SIMON. Thank you for an excellent statement.

Ms. Paula Hepner, Advocates for Children.

[The prepared statement of Paula Hepner follows:]

PREPARED STATEMENT OF PAULA J. HEPNER, ADVOCATES FOR CHILDREN

Advocates for Children of New York, Inc.(AFC) is a private not-for-profit organization of parents and citizens who have vigorously pursued the rights of all children to appropriate educational services in the City of New York. AFC was born 10 years ago out of concern for the denial of equal educational opportunity and due process safeguards to thousands of failing, segregated and excluded school children, both handicapped and non-handicapped. Over the past ten years, AFC has represented over 7000 individual children and parents on a full range of educational matters. In addition to individual case advocacy, AFC has asserted the educational rights of all children by training and organizing parent and citizen groups, through research and issue development, and the creation of a youth employment and leadership project.

Since its beginnings, Advocates for Children has devoted significant energies to the establishment and improvement of educational opportunities for handicapped children. In 1972 AFC started the Martin de Porres Day Treatment Program for poor, emotionally disturbed children, most of whom were referred by Family Courts where they had been brought by parents who could not find appropriate education and related child care services for them. The following year, AFC published Lost Children which documented the discriminatory education and support services provided to poor, minority, handicapped children from multi-problem families. In 1978, one year after the effective date of the Education for all Handicapped Children Act, (EHA) AFC started a major Handicapped Children's Rights Unit, expanding its advocacy staff to include counselors, lawyers, researchers and trainers.

Of the more than 1000 individual cases AFC now handles annually, 50% are handicapped students in need of special education and related services. Fifty-six percent of the 504 handicap cases we handled this past year raised the single issue of children who have not been evaluated or who have been evaluated but not placed in special education programs. From its inception, the Handicapped Rights Unit has filed and won more precedent-setting appeals on issues concerning the educational entitlements created in P.L.94-142 than any other N.Y.C. advocacy group.

During 1979, AFC sought and was granted Amicus status in two landmark special education suits in New York federal courts--Jose P. v. Ambach and Lora v. the Board of Education. In Jose P., numerous organizations have participated as Amicus Curiae, but AFC is the only participant with field experience representing hundreds of handicapped children, with a realistic overview of the needs of the parents and children involved, as well as an extensive understanding of the areas in which the implementation of P.L.94-142 mandates have broken down. We thank you for these moments to share our knowledge and personal experiences with you today.

AFC is one of the 13 members of the Education Advocates Coalition. The Coalition's report on the status of P.L. 94-142, which you have all received, identifies ten major areas of nationwide non-compliance with the mandates of the EHA from which five conclusions are drawn about the ineffectiveness of the compliance monitoring program operated by the Bureau for the Education of the Handicapped [BEH]. This morning I would like to support the first three of those conclusions with material based on our efforts as an advocacy organization to enforce the educational rights in the EHA through litigation, negotiation and conciliation.

The most comprehensive description of the state of education for handicapped children in New York City, can be found in the orders entered in the Jose P. and Lora cases, both concluded during 1979.

Lora is a class action, filed in June 1975 on behalf of Black and Hispanic children assigned to the special day schools for the emotionally handicapped (formerly the SMED or 600 schools) operated by the New York City Board of Education. Following a lengthy trial, federal District Court Judge Jack B. Weinstein issued an extensive opinion in which he found that the Board of Education violated various constitutional and statutory rights of the Plaintiffs, specifically that the Board had discriminated on the basis of race in the assignment of minority children to the special day schools in violation of the equal protection clause of the Fourteenth Amendment and Title VI of the Civil Rights Act of 1964, and that the inadequate programs in the special day schools, along with the inadequate referral and evaluation process, violated the plaintiffs' constitutional right to treatment, various provisions of the EHA, the Rehabilitation Act of 1973, the New York State Education Law and Regulations.

On July 2, 1979, the District Court issued a final order which required the Board to make significant changes in the delivery of educational services to emotionally handicapped children. The final order covers several important areas including:

- identification and evaluation of students illegally placed in the special day schools and a determination of the appropriateness of their placement;
- development of non-discriminatory standards and/or criteria and procedures to be used in the identification, evaluation placement, transfer and re-evaluation of emotionally handicapped students;
- development of a full continuum of services for emotionally handicapped children with placement in the least restrictive educational environment;
- preparation of readily understandable documents explaining to parents their due process rights and the individualized education program (I.E.P.);
- increased services and programs in the special day schools for those students remaining in the program; and
- steps to avoid the unnecessary use of private schools at public expense for handicapped students.

Jose P. v. Ambach is a class action that was filed in February 1979 on behalf of all children between the ages of five through twenty-one who were deprived of a free appropriate public education because of the Board of Education's failure to timely evaluate and place such children in suitable education programs.

Jose P. v. Ambach was a direct outgrowth of the long-standing Riley Reid litigation. Riley Reid was initiated approximately ten years ago, when a group of handicapped children alleged that they were not being evaluated on a timely basis and that they were not being provided with an appropriate education. As early as November 1973, the New York State Commissioner of Education found massive violations of the rights of handicapped children as then guaranteed by state laws and regulations. [N.Y. Comm. Ed. Dec. No. 8742; 13 Ed. Dept. Rep. 118 (1973)].

Subsequent to this decision, the Riley Reid plaintiffs complained to the Commissioner that the needs of handicapped children were still not being met. In March 1974 oral argument was heard. Additional evidence and arguments were made in December 1975. In June 1977, the Commissioner issued an interim order requiring the N.Y.C. Board of Education to operate its evaluation and placement units during the 1977 summer months. In a further decision, dated September 2, 1977, the Commissioner found that the Board still had not satisfactorily complied with the November 1973 order. [N.Y. Comm. Ed. Dec. No. 9499; 17 Ed. Dept. Rep. 71(1977)].

A supplementary order was issued by the Commissioner on October 12, 1977. [N.Y.Comm. Ed. Dec. No. 9526; 17 Ed. Dept. Rep. 127 (1977)]. As a result of the N.Y.C. Board of Education's failure to comply with the Commissioner's several orders and its failure to comply with applicable federal and state laws and regulations, Jose P. was initiated.

When the Jose P. suit was filed, the numbers of handicapped children awaiting evaluation and/or placement exceeded 14,000 with an average of 3000 new referrals coming in monthly.

Subsequent to a brief hearing held in the Jose P. case, at which the Board of Education admitted its failure to timely evaluate and place children, Judge Nickerson issued a Memorandum and Order on May 10, 1979, certifying the class, finding that the Board had failed to comply with State and Federal requirements concerning timely evaluation and placement of handicapped children and appointing former federal judge Marvin Frankel as a Special Master in the case.

Extensive negotiations among the parties and *amici* were held under the supervision of the Special Master. On December 14, 1979, Judge Nickerson issued a comprehensive order in Jose P. following Judge Frankel's recommendations, which were based on the Board's own plan for reorganizing special education services, and the procedures developed during the negotiations among the parties and *amici*. The relief encompasses the following:

1) Identification of children in need of special education services, an annual census, an outreach office with adequate bilingual resources, and a procedure for reviewing the needs of truants and drop-outs;

2) Appropriate Evaluation - Establishment of school based support teams (SBSTs) in all schools by April of 1981 to evaluate children in most instances in their own school environment and to seek school based remedies where appropriate, provision of resources by the spring of 1980 for timely evaluation of children either by Board of Education staff or through contracting with approved outside facilities, and provision of bi-lingual, non discriminatory evaluation processes;

3) Appropriate Programs in the Least Restrictive Environment- The provision of a continuum of services including preventive services, resource room programs in all regular schools, and sufficient programs for all handicapped children with both high incidence and low incidence disabilities as close to their homes as possible, and the provision of appropriate bi-lingual programs at each level of the continuum for children with limited English proficiency;

4) Related Services - The commitment to hire sufficient personnel to provide all related services (such as physical and occupational therapy) for children who need these services to benefit from special education, and to provide all related services identified as needed in the child's individualized education program.

5) Facilities Accessibility - Centers for physically, multiply and profoundly handicapped students will be fully physically accessible, programs at each level of the continuum will be readily accessible to physically handicapped and non-ambulatory children in schools reasonably close to their homes and committees on the handicapped will be physically accessible and reasonably accessible to public transportation.

6) Due process and parental and student rights - The commitment to issue parents' rights booklet (and a Spanish language version) which explains all the due process and confidentiality protections available to parents and students, including appeal rights, provision for participation by parents in all Committee on the Handicapped meetings held to discuss their children, provision of extensive outreach efforts, which include hiring neighborhood workers, to involve parents in the evaluation and placement process and in developing individual educational programs, and to insure that cases are not improperly closed and that pupils are not improperly dropped or discharged from special education programs, and procedures for the

appointment of surrogate parents for children whose parents are unknown, cannot be discovered or are wards of the court.

7) Data Collection - The judgment provides for the creation of a long needed management information system providing periodic statistical reports on evaluation and placement, detailing the number of children referred for initial evaluation, the number of children referred for re-evaluation, the number of children for whom program recommendations have been made, the number of children whose cases were closed and the reasons therefor, the total number of children currently awaiting a program recommendation less than 30 days from referral and more than 30 days from referral and the total number of children offered placement sites.

The judgment issued by Judge Nickerson is as far reaching a remedial order as the judgment in Lora. Both decrees affect virtually every aspect of special education in New York City, although I hasten to point out, these judgments do not provide for anything not already required by §504 of the Rehabilitation Act of 1973 or the EHA.

The condition of special education in New York City, as revealed by these two lawsuits, is irreconcilable with the special education programs and services in New York State portrayed in BEH's 1978 report written just a year before the orders in Lora and Jose P. were signed. By comparing the findings of BEH's 1978 Program Review with the violations identified by the district courts in Lora and Jose P., we are able to illustrate the problems with BEH's monitoring activities that are identified in the Coalition's report.

The first exhibit attached to this testimony is a copy of the 1978 Program Review. As the Coalition Report explains, the review is composed of thirty areas of inquiry, and looking at this report, you will see that nearly 50% of the questions concentrate on the formulation and dissemination of state policies governing the implementation of EHA's provisions, and not at all on areas reasonably calculated to illuminate actual state practices and areas of non-compliance.

The site visit was limited to the customary five days, so naturally very few school districts and programs could actually be visited. From a quick glance at the 1978 report, it is clear that New York City was not inspected during that program review notwithstanding the reality that New York City has historically educated one quarter of the total population of handicapped children in the entire state, its present enrollment is 63,797 handicapped children, there is a waiting list of 15,000 handicapped children, and thousands of yet unidentified children are in need of special education programs.

Were N.Y.C. visited, BEH could not have found:

• that State and local education agencies were in compliance and carrying out an "extensive and aggressive child-find program	• when data collected during discovery proceedings in Jose P. shows that of the 21,551 students referred for evaluation during 1978-79, only 66 were sent to Committees on the Handicapped by the Child Find office in N.Y.C. and when the court in Jose P. ordered an extensive outreach program
• that NY's level of implementation in the IEP requirements in EHA is "so high that it is difficult to say that the state is not in compliance."	• when the state law which allows IEP's to be prepared 30 days after the child enters a program, is itself contrary to the mandates of the EHA, and in addition, when the entire IEP process could be completed without parental involvement, in contravention of the EHA which contemplates maximum parental participation at every stage

- that local educational agencies follow state procedural safeguards
- that the implementation of the least restrictive environment provisions and policies could be satisfied with the development of local policies regarding the placement of children in the least restrictive environment and procedures to implement the practice statewide

- when two federal courts ordered massive reform of the NYC's practices and procedures to safeguard due process rights, and bring the City into compliance with the EHA.
- when the proof in Lora offered numerical evidence of the exclusion of large numbers of minority children from more mainstreamed public school classes; and
- when the statistics provided in Jose P. showed that only 5,481 (or 5%) of the total number of students in special education are NOT in segregated or self-contained classes.

In its first conclusion, the Coalition report charges that BEH's monitoring system is deficient because it does not make use of all of the tools available to it. Were BEH to require states collect data similar to that required by the order in Jose P., BEH would then have a statistical profile of special education in operation.

The report also charges that B.E.H. does not solicit the opinion of local advocacy groups concerning the provision of special education in their communities. AFC was not asked to participate in the 1978 Program Review. This past October we were contacted by BEH and asked to meet with one of their staff people before the 1979 Program Review was performed. Our views on the implementation of P.L. 94-142 were invited as were our suggestions of particular programs to visit during the inspection. Since we have not seen the results of this Program Review and our follow-up letter in January has not been answered, it is difficult to determine whether our meeting with B.E.H. was anything more than a courtesy call. The information to be gained from local advocacy groups together with the real-life experiences found in individual complaints made to BEH would provide a useful measure analyzing the raw statistics collected by the State. We believe there is no other way to determine the state-wide scope of non-compliance.

Finally the monitoring procedures, specifically the Program Reviews, are insufficient because the scope of BEH's inquiry is not proportionate to the handicapped population identified, the geographical distribution of handicapped students nor the size and number of school districts involved, and because compliance is measured in terms of whether state policies are in place to secure the rights under EHA. No program review for the State of New York should be finalized without studying the New York City educational system. Nor should a program review focus the majority of its attention on policies instead of practices. The 1978 program review made no mention of the thousands of children on waiting lists for special education programs, although the problem has been known to state education authorities since 1973 when the Matter of Riley Reid first came before the Commissioner. This omission is the product of BEH's method of inquiry during its program reviews and can be easily corrected by redrafting the thirty questions to search out information about whether children are actually receiving services and if so, how, and if not, why.

The second and third conclusions about BEH raised in the Coalition Report are addressed to achieving compliance through enforcement procedures and facilitating compliance through the creation of a responsive agency offering real technical assistance to the States.

There is no justification for legal services organizations having to bring suits like Lora and Jose P. into the federal courts where judges, instead of BEH, ultimately end up doing what is essentially a program review, documenting areas of non-compliance and then entering orders to enforce the EHA's provisions and to remedy the violations uncovered.

Assuming instances of non-compliance have been found, BEH is not by statute confined to being a watchdog agency, that is, one with lots of bark but no bite. BEH claims to use its powers only when a state demonstrates that it is "unwilling or unable to come into compliance" yet the Riley Reid documentation of non-compliance for a period of six years was not a sufficient demonstration of "unwillingness or inability" for BEH to initiate an enforcement proceeding.

Last summer the Board of Education attempted to secure parental consent to classifications and program placements by using an "acquiescence" letter. When a program recommendation was sent to a parent, the accompanying letter informed them that failure to respond within a certain number of days would result in the placement of their child in the class recommended. Such a procedure is an unmistakeable violation of the EHA. However, the Board of Education told AFC that they had received permission from BEH to institute this procedure. What the Board had received from BEH was a letter merely restating the law, leaving its interpretation entirely up to the Board. (Exhibit 2) AFC telephoned BEH several times to request that they either issue an immediate policy statement on the legality of the "acquiescence" procedure, or declare such a procedure void and issue a cease and desist order to stop the Board of Education from using the acquiescence letter. We were bounced back and forth between the city, state and federal educational agencies none of whom were ever able to give a definitive response. In utter desperation we wrote a formal letter to BEH and never received a reply. Consequently, the "acquiescence" procedure was brought up during negotiations in Jose P. and the procedure was abandoned shortly thereafter by the Board.

If a formal enforcement proceeding is not required to achieve compliance, BEH has the power to devise remedies for the problems it uncovers without resort to a formal proceeding. The difficulty is that the remedial measures BEH has used so far do not bring about compliance. Perusing the "Corrective Actions" directed by BEH in the 1978 Program Review for New York, one notices the "compliance measures typically fall into one of three categories. BEH either: excuses the missed deadlines and establishes new timelines; finds the state's efforts "sufficient to be in compliance at this time" and therefore recommends no other compliance measures to speed up implementation; or merely recites the requirements of the EHA and admonishes the state to hurry up and do a better job.

Monitoring of "corrective actions" is left largely to the state education authorities so whatever gains may have been accomplished by proving non-compliance during the program review are lost in the remedial stage since BEH does not do its own follow-up. It is our view that these are token, minimal efforts which will not bring about the full implementation of the EHA nor do they reflect the voice of a strong advocate on whom handicapped children, living in areas where there are no Legal Aid Societies or Advocates for Children, must depend.

Finally, we want to address the efforts BEH could be making to facilitate compliance by issuing guidelines and policy directives on matters requiring clarification. Five years after the passage of the EHA, not one of several vitally important policy statements has been released. Of the subject areas identified in the Coalition Report, the following policy interpretations are of special significance to children in New York City.

1. Non-discriminatory Evaluation Procedures and Criteria for the Least Restrictive Environment

These were fundamental issues raised in the Lora case. The use of discriminatory evaluation procedures resulted in the courts finding of race discrimination and that the absence of lesser restrictive placements produced a violation of the plaintiffs' right to treatment. The final order in Lora requires the Board of Education develop non-discriminatory evaluation procedures and already they have conceded they may be unable to do so.

With respect to the least restrictive environment, Jose P.'s statistics show 95% of the students in special education are in self-contained, segregated programs. Both Lora and Jose P. requires the creation of a continuum of alternative placements. However, criteria for moving students from one setting to another less restrictive setting are essential in deciding what alternative placements should be developed.

2. Procedure for the Use of Surrogate Parents

The federal and New York State laws do not set forth guidelines governing the appointment of surrogate parents. To our knowledge only two surrogate parents have been assigned in New York City since these laws took effect. The surrogate parent provisions of the EHA were not whimsical concepts in the minds of the drafters of the EHA. These provisions reflect a deep concern for the thousands of children around the country who are without interested and informed advocates. New York City practices have been out of compliance with even the minimal provisions of the EHA for several years. The order in Jose P. has tried to correct the vagueness of New York's statutes and establish a set of workable guidelines for the Board of Education to follow.

3. The Use of Suspensions and Expulsions to Discipline Handicapped Students

Two percent of AFC's handicap cases last year were suspensions. The percentage is larger this year. Although the New York City Board of Education has issued a policy directive establishing procedures for suspending handicapped children, it is unconstitutional under the holdings of federal and state courts faced with this issue in recent months. New York's state law has no procedures for the suspension of handicapped students and is also out of compliance with the mandates of the EHA.

Since last year AFC has attempted to work with the City Board of Education toward the creation of a mutually satisfactory and practical procedure. We have written two letters, had several meetings and conversations with Board personnel and commented on a draft of a proposed procedure. Nearly two years have slipped by since Stuart v. Nappi reached this issue for the first time. BEH has been on notice, since then, that a policy statement concerning suspension practices must be formulated. Since New York suspension practices are not out of compliance in BEH's view, there appears to be nothing, save another lawsuit, that will force the Board of Education to produce a constitutional suspension procedure.

4. Definition of the Scope of Related Services and Criteria for Interagency Agreements to provide these Services.

As budgets become more stringent, we have found the first victims are those children who need "related services." In NYC we are experiencing both problems identified in the Coalition Report - the educational authorities have begun to narrow the definition of related services to exclude essential and legally mandated services, and we have a shortage of "related services" personnel and an insufficient number of contracts with outside providers to compensate for the shortages.

With regard to the impermissible narrowing of the definition of related services, the Commissioner of Education issued a bulletin in February 1980, delcaring "psychotherapy" is not a related service any longer, although "education-related psychological, counseling and social work services" remain on the list as proper related services. In June, 1979, BEH responded to an inquiry concerning the obligation of a local educational agency to pay for psychotherapy as a related service but deferred answering the question. (Exhibit 3) Months pass while this service continues to be denied to handicapped students in need of this assistance in order to benefit from their special education programs. Two instances where the service has been withdrawn are currently on appeal to the Commissioner. Since he will not overturn his directive unless BEH forces him to do so, the parents will automatically lose their appeals and find themselves in federal court, litigating still another issue that requires nothing more than a policy interpretation.

During 1978-1979, 3% of the handicap cases we handled involved related services. This year the number of related services cases has increased dramatically. Most of the 45+ impartial hearings we have appeared in this year have sought related services or resource rooms that were recommended but not provided. Since January, 1980, we have represented 30 learning disabled children for whom there are no resource rooms. According to current figures provided in Jose P., the Board of Education only employ 4 full-time Occupational Therapists and 2 part-time Physical therapists to service the thousands of multiply-handicapped NYC children in the education system.

A large percentage of the related services cases arise out of the critical shortage of professional staff. The only substantially available related services presently provided by the Board of Education are transportation and speech therapy. Other vital related services are simply being neglected. It is clear that lack of qualified personnel is one of the prime causes for the failure to effect more placements and of the failure to provide related services even when they are recommended.

All too often it has been our experience that a teacher, for example, giving occupational therapy to a group of students in one school will be removed from that program and reassigned to another school where a parent has a child who is not receiving occupational therapy and requested an impartial hearing. Instead of hiring a second occupational therapist, the Board of Education gambles on the probability that there are no activist parents of children at the first school who will file for an impartial hearing after the services are discontinued to force their restoration.

The increased volume of resource room cases was brought about by combined factors such as the hiring freeze on all school personnel from December 1, 1979 through February 6, 1980 and the simultaneous termination of 39 learning disabilities resource room teachers during December, 1979. One month later, when the Jose P. judgment ordered that 500 resource rooms be operating by February 1, 1980, the Board was then forced to go out and rehire resource room teachers. Currently 14 have been rehired and the waiting list for resource room service now numbers 1500 children.

In all fairness to the Board of Education, in closing, we must warn state and federal governments that their increasing reluctance to fund social welfare programs such as the FHA, in this period of fiscal restraint, can only lead to further disenfranchisement of handicapped children in America who, with equal educational opportunities, can become productive members of our society. By cutting back on the level of funding for EHA's programs, state and local governments will have to share the responsibility for our failure to reach to promise of EHA throughout this country and particularly in New York City.

Beyond these fiscal matters, I must stress our ardent belief that P.L. 94-142 is legislation that can be implemented. By maintaining the current level of funding for EHA's programs, and by encouraging BEH to become an aggressive, creative monitoring agency, we believe that the goals of the EHA can be realized - even right here in the largest educational system in the country.

PROGRAM ADMINISTRATIVE REVIEW
DRAFT REPORT
FOR
NEW YORK

Date: [Date omitted]
Chairperson: Gerald B. Boyd
Team Members: Charles Cordova
Belle Cohen
Toni Mason
Nancy Treusch

Date of Site Visit: March 13-17, 1978

A. OVERVIEW OF THE PROGRAM ADMINISTRATIVE REVIEW PROCESS

Consistent with its responsibility to administer the State grant programs authorized under the Education for the Handicapped Act - Part B (as amended by P.L. 94-142) and the Elementary and Secondary Education Act - Title I (as amended by P.L. 89-313), the Division of Assistance to States, BEH, conducts Program Administrative Reviews on an on-going basis. The major purpose of these on-site activities is the determination of the degree to which State policies, procedures, and practices are consistent with Federal statutes, regulations and each State's Annual Program Plan.

BEH attempts to conduct reviews of this nature in at least one-half of the States each year. Such a review was recently conducted in this State. Information was obtained from (a) State Education Agency staff members, (b) Local Education Agency administrators, (c) State-Operated or State-Supported Program administrators (institutions and other recipients of P.L. 89-313 funds), (d) parent group members, and (e) State Advisory Panel members. Approximately four days were spent in the various agencies reviewing policies, procedures, and practices. The fifth day was devoted to discussion with State Education Agency staff members to verify and clarify findings and begin dialogue concerning possible corrective actions and/or recommendations (where warranted). An exit conference was conducted with the Chief State School Officer (or his/her designee) for the purposes of reviewing the week's activities, and articulating preliminary findings and results.

This draft report was developed following the completion of the on-site activities, and has been sent to the State for reaction. If, after a period of two weeks, BEH has not received a response, this report will be issued in Final form.

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Exhibit-1

B. FINDINGS OF ON-SITE REVIEW

1. SUBMISSION OF ANNUAL PROGRAM PLAN

Authority: *Public Law 94-142*

§ 612(2)(E)
§ 612(7)(A)(B)

Final Regulations

Regs. 121a.110-111
Reg. 121a.137
Reg. 121a.120
Regs. 121a.280-284

Findings:

There was evidence that there had been public notice indicating the availability of the Annual Program Plan and that hearings had been held. Many of the people interviewed attended the hearings.

Corrective Action:

The activities carried out by the State Education Agency meet federal requirements; therefore, no corrective action is necessary.

2. RIGHTS TO EDUCATION POLICY

Authority: *Public Law 94-142*

§ 612(1)

Final Regulations

Regs. 121a.121-122

Findings:

An appropriate policy statement was provided in the Annual Program Plan indicating the commitment of the State of this policy.

All of those interviewed were aware of the State's policy with respect to this requirement.

Corrective Action:

Because the State is in compliance with this requirement, no corrective action is necessary.

3. FULL EDUCATIONAL OPPORTUNITIES GOAL

Authority: *Public Law 94-142*

§ 612(2)(A)

Final Regulations

Regs. 121a.123-126

Findings:

The LEA's and State-operated programs that were visited were aware of the Full Educational Opportunities Goal and had incorporated this policy into their Comprehensive Plans. There was apprehension expressed by LEA and SOP personnel regarding their ability to meet this goal. All Federal requirements had been met.

Corrective Action:

No corrective actions are necessary.

4. PRIORITIES

Authority: *Public Law 94-142*

§ 612(3)

Final Regulations

Reg. 121a.127
Regs. 121a.320-324

Findings:

The team found evidence in all local education agencies visited that the State's policy on priorities for the use of funds under Part B of EHA was known and understood.

The priorities described by local education agency administrators were consistent with the policy on priorities in relation to out-of-school children.

Corrective Action:

The State Education Agency has made known and implemented the policy on priorities; therefore, no corrective action is necessary.

5. CHILD IDENTIFICATION, LOCATION AND EVALUATION

Authority: *Public Law 94-142*

§ 612(2)(c)

Final Regulations

Reg. 121a.128

Findings:

The team found evidence in all areas visited that the State Education Agency, and local education agencies have carried out and have indicated they will continue to carry out an extensive and aggressive State-wide child find program.

Corrective Action:

Because the State is in compliance with this requirement, no corrective action is necessary.

6. INDIVIDUAL EDUCATION PROGRAM

Authority: *Public Law 94-142*

§ 612(4)
§ 614(a)(5)

Final Regulations

Reg. 121a.130
Reg. 121a.235
Regs. 121a.340-349

Findings:

The SEA has done an excellent job in this area. Very few instances were found in which IEPs had not been completed on children. While the Regulations say that there must be an IEP on all children receiving services, New York's level of implementation is so high that it is difficult to say that the state is not in compliance with this requirement. However, since there were a few cases of no IEPs on children, then the SEA must take steps to rectify this situation.

Corrective Actions:

1. The SEA shall initiate monitoring activities to insure that LEAs and SOPs have an IEP for each child.
2. The SEA shall establish a monitoring schedule of all LEAs and SOPs.

Timelines:

1. Notification by June 1, 1978.
2. Initiate monitoring by June 15, 1978.
3. All IEPs in place by June 30, 1978.
4. Complete monitoring of all LEAs and SOPs within three years.

7. PROCEDURAL SAFEGUARDS

Authority: *Public Law 94-142*

§ 612(5)(A)
§ 615

Final Regulations

Reg. 121a.131
Reg. 121a.136
Regs. 121a.500-514

Findings:

SEA policies on procedural safeguards are consistent with Federal regulations. LEAs and SOPs indicated that they follow State guidelines. Several hearings had been held in the State. Parents interviewed had not been made aware of all procedures involved in initiating a hearing.

Corrective Actions:

The SEA shall notify LEAs and SOPs of the need to notify parents of all rights and procedures pertinent to procedural safeguards.

2. The SEA shall initiate monitoring activities to insure that parents have been fully informed.
3. The SEA shall schedule monitoring of all LEAs and SOPs.

Timelines:

1. Notify by May 15, 1978.
2. Initiate monitoring activities by June 1, 1978.
3. Complete monitoring of all LEAs and SOPs within three years.

8. CONFIDENTIALITY

Authority: *Public Law 94-142*

§ 612(2)(D)
§ 617(c)

Final Regulations

Regs. 121a.560-576

Findings:

Of the LEAs and SOPs visited none exhibited all components necessary to meet the requirements set forth in the Federal regulations. The SEA had not monitored LEAs and SOPs for consistency with Federal regulations.

Corrective Actions:

The SEA must take the necessary steps to insure that LEAs and SOPs meet the confidentiality requirements of the Federal regulations. These steps shall include:

1. Notification of LEAs and SOPs of confidentiality requirements.
2. Monitoring activities to insure that confidentiality requirements are met.
3. Establish a schedule of monitoring.

Timelines:

1. Notification by May 15, 1978.
2. Initiate monitoring activities by June 1, 1978.
3. Monitor all LEAs and SOPs within three years.

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9. LEAST RESTRICTIVE ENVIRONMENT

Authority: *Public Law 94-142*

§ 612(5)(B)

Final Regulations

Reg. 121a.132
Regs. 121a.550-556

Findings:

Policies and procedures had been developed and disseminated by the SEA; however, problems were identified in relation to the implementation of this provision. Not all LEAs or SOPs had a policy regarding the placement of children in the least restrictive environment. The team found no evidence of monitoring of least restrictive alternative policies in either LEAs or SOPs.

Recommendations:

The SEA should advise local education agencies of the procedures necessary to implement state-wide practice of the education of handicapped children in the least restrictive environment. In addition, technical assistance should be provided to those LEA's where placement alternatives are minimal.

Corrective Action:

The State Education Agency should develop and implement procedures to monitor the implementation of least restrictive environment policies in LEAs and SOPs.

Timeline:

The State Education Agency must provide the Bureau of Education of the Handicapped with documentation of the implementation of the least restrictive environment policies by June 1, 1978.

10. PROTECTION IN EVALUATION PROCEDURES

Authority: *Public Law 94-142*

§ 612(5)(C)

Final Regulations

Reg. 121a.133
Regs. 121a.530-534

Findings:

The team found that in the LEAs and SOPs visited the policies and procedures followed in evaluations were consistent with requirements in the Federal regulations.

Corrective Actions:

Federal requirements were met; therefore, no corrective actions are necessary.

11. COMPREHENSIVE SYSTEM OF PERSONNEL DEVELOPMENT

Authority: *Public Law 94-142*

§ 613(a)(3)

Final Regulations

Reg. 121a.139
Regs. 121a.380-387

Findings:

The LEAs and SOPs visited by the BEH were found to be in compliance with Federal regulations.

Corrective Action:

No corrective actions are necessary.

12. PARTICIPATION OF PRIVATE SCHOOL CHILDREN

Authority: *Public Law 94-142*

§ 613(a)(4)(A)

Final Regulations

Reg. 121a.140
Regs. 121a.450-460

Findings:

The LEAs and SOPs visited by the BEH team were found to be in compliance with Federal regulations.

Corrective Actions:

No corrective actions are necessary.

13. PLACEMENT IN PRIVATE SCHOOLS

Authority: *Public Law 94-142*

§ 613(a)(4)(B)

Final Regulations

Reg. 121a.143
Regs. 121a.400-403

Findings:

The LEAs and SOPs visited by the BEH team were found to be in compliance with Federal regulations.

Corrective Actions:

No corrective actions are necessary.

14. SEA RESPONSIBILITY FOR ALL EDUCATIONAL PROGRAMS

Authority: *Public Law 94-142*

§ 612(6)

Final Regulations

Reg. 121a.134
Reg. 121a.600

Findings:

Interagency agreements giving SEA responsibility for all handicapped children in education programs in all State agencies began in FY '78. A State law becomes effective this year which will establish the SEA as the coordinating and regulating agency for agencies educating children in the state.

Corrective Actions:

No corrective actions are necessary.

15. PROGRAM MONITORING

Authority: *Public Law 94-142*

§ 612(6)

Final Regulations

Reg. 121a.135
Regs. 121a.601-602
Reg. 121a.194

Findings:

State had not developed on-site monitoring procedures. A few on-site monitoring visits had been made by SEA during this school year, but there was no progress for establishing objectives for the visit or making a written report of the visit. Also, there was no follow-up mechanism.

Corrective Actions:

Monitoring procedures must be developed and implemented, including on-site monitoring on a regular basis. There must be monitoring of all of the Federal requirements in all agencies.

Timelines:

1. Monitoring document designed by June 1, 1978.
2. Monitoring schedule developed for school year 1978-79.
3. On-site monitoring to a minimum of 5 school districts upstate and 5 school districts downstate and 5 State-operated projects by June 15, 1978.
4. On-site monitoring to all LEAs and all State-operated programs on a regular basis. The schedule will include at least one-third of all LEAs and one-third of all State-operated programs each school year. Additionally, the schedule for State-operated programs shall be such that the major programs with large numbers of children in ADA will be visited each school year.

16. PROGRAM EVALUATION

Authority: *Public Law 94-142*

§ 613(a)(11)

Final Regulations

Reg. 121a.146

Findings:

Interviews with SEA personnel by BEH team members indicated that there were plans to do program evaluation. Preliminary planning was found to be sufficient to be in compliance at this time.

Corrective Actions:

No corrective actions are required.

17. REPORTING

Authority: *Public Law 94-142*

§ 613(a)(7)
§ 614(a)(3)(A)
§ 618(b)(1)

Final Regulations

Reg. 121a.143
Regs. 121a.232-233
Regs. 121a.750-754

Findings:

State-wide reporting and data collection was in compliance with the requirements in the Federal regulations.

Corrective Actions:

No corrective actions are necessary.

18. CHILD COUNT PROCEDURES

Authority: *Public Law 94-142*

§ 611(a)(3)

Final Regulations

Regs. 121a.750-754

Findings:

The team found that policies and procedures had been developed and disseminated to local education agencies. However, there was no evidence that these procedures provided that children included in the ADA count to generate

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funds under the provision of P.L. 89-313 are not to be included in the EHA-B count. Further, there was no evidence that monitoring procedures exist which would include the on-site review of records and procedures to determine that such counts are accurate and unduplicated.

Corrective Actions:

1. The SEA must revise its child count procedures to include a provision that will assure that LEAs are not including P.L. 89-313 children in their EHA-B count.
2. The SEA must develop and implement monitoring procedures for on-site review of records and practices to determine that such counts are accurate and unduplicated.

Timelines:

1. Child count procedures revised by June 1, 1978.
2. Monitoring (See Item No. 15 of this report).

19. ADMINISTRATION OF FUNDS BY SEA

Authority: *Public Law 94-142*

§ 611(b)(1)
§ 611(b)(2)(A), (B)
§ 613(a)(2)

Final Regulations

Regs. 121a.620-621
Regs. 121a.700-710

Findings:

The BEH team found that the New York SEA was administering funds in a manner consistent with Federal regulations.

Corrective Actions:

No corrective actions are necessary.

20. ADMINISTRATION OF FUNDS BY LEA

Authority: *Public Law 94-142*

§ 611(b)(A) (B)
§ 611(d)
§ 614(a)(1)(A), (B), (C)
§ 614(a)(2)
§ 614(a)(4)
§ 614(a)(5)
§ 614(C)(2)(B)
§ 614(d)

Final Regulations

Regs. 121a.182-186
Regs. 121a.190-194
Regs. 121a.228-231

Findings:

The BEH team found that the administration of funds by LEAs was consistent with Federal regulations.

Corrective Actions:

No corrective actions are required.

21. STATE ADVISORY PANEL

Authority: *Public Law 94-142*

§ 613(a)(12)(A), (B), (C)

§ 615(d)(4)

Final Regulations

Reg. 121a.147
Regs. 121a.650-653
Regs. 121a.508(a)(5)

Findings:

An advisory panel had been established in accordance with requirements.

Corrective Actions:

No corrective actions are required.

22. STATE AGENCY ELIGIBILITY TO PARTICIPATE UNDER P.L. 89-313

Authority: *Public Law 94-142*

1974 Amendment to P.L. 89-313
Title I; ESEA
Subpart 2, Sec. 121(a)

Findings:

Documentation was available to support the fact the agencies receiving funds were directly responsible for the education of the children they served. The education programs met State standards. All professional staff employed were either certified or working toward that end. No charges had been levied to parents whose children had been placed for educational reasons. All federal requirements had been met.

Corrective Actions:

No corrective actions are necessary.

23. ELIGIBILITY OF CHILDREN TO RECEIVE BENEFITS

Authority: *Public Law 94-142*

1974 Amendment to P.L. 89-313
P.L. 93-380, ESEA,
Sec. 121(c)

Findings:

The team's review of class registers at the SOPs visited indicated that all eligible children were receiving some benefits.

Corrective Actions:

No corrective actions are necessary.

24. CHILDREN TRANSFERRED TO LEAs FROM SOPs

Authority: *Public Law 94-142*

1974 Amendment to P.L. 89-313
P.L. 93-380, ESEA,
Sec. 121(b)

Findings:

Discussion with SEA and Mental Health personnel yielded evidence that a system was generally initiated to assure that monies generated by a student followed the child. However, control of all variables had been more comprehensively addressed by the mental health agency than by the SEA. Essentially, the basic procedure was in place but not totally implemented. This contention was supported by some degree of lack of knowledge at the project level.

Corrective Actions:

The SEA will supply documentation to BEH that the transfer provision is fully implemented.

Timelines:

Within 30 days after receipt of Draft Report.

25. EVALUATION OF EDUCATIONAL ACHIEVEMENT OF PARTICIPATING CHILDREN

Authority: *Final Regulations*

Title I, Section 116.43(b)

Findings:

All projects under State agencies contained evaluation components. However, the objectives were not measurable or child centered. Therefore, the evaluations were improperly designed.

Corrective Actions:

The SEA must discontinue the practice of approving any projects which fail to include appropriate evaluation components.

Timelines:

No project applications received in the SEA after June 1, 1978 shall be approved unless appropriate evaluation components are included.

26. MEASURABLE PROJECT GOALS AND OBJECTIVES

Authority: *Final Regulations*

Title I, Section 116.43(b)

Findings:

Review of project applications and interviews with both State Department and institutional personnel revealed that the goals as written in the projects were either not measurable or not child centered.

Corrective Actions:

All project applications approved for funding shall include measurable child centered goals and objectives.

Timelines:

Beginning with project applications for FY '79 no project application without appropriate measurable child centered goals and objectives will be approved.

27. PROJECT MONITORING AND TECHNICAL ASSISTANCE BY SEA

Authority: *Public Law 94-142*

Final Regulations

Title I, Section 116.4(a)

Findings:

Since the New York SEA had only recently expanded their staff, the annual monitoring required by statute had not been fully implemented. While SEA staff indicated that the monitoring responsibility mandated by both P.L. 94-142 and P.L. 89-313 had been essentially delegated to regional personnel, this understanding did not appear to be universal. Team members were shown some evidence of monitoring as documented by monitoring reports. However, it must be noted that these reports did not appear to be comprehensive in terms of addressing all the variables in either P.L. 89-313 or P.L. 94-142. Required end-of-year reports could be supplied at the various levels visited.

Most of SEA staff alluded to the fact that the technical assistance appeared to be offered by Mental Health and/or evaluators for programmatic concerns in project design and construction. The SEA role appeared to be that of an administrative and fiscal consultant. It was contended that the additional staff compliment would enable them to increase their

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involvement. Further, it was indicated that general supervision requirement in P.L. 94-142 had only been initiated and needed to be functionalized.

Corrective Actions:

The SEA shall develop and implement monitoring procedures to assure that the requirements of both the P.L. 94-142 and P.L. 89-313 provisions are met. This procedure must be documented to BEH.

Timelines:

Monitoring (See item 15 of this report).

28. DISSEMINATION OF PROJECT FINDINGS

Authority: *Public Law 94-142*
Final Regulations
Title I, Section 116.44

Findings:

All projects visits and applications reviewed had met the federal requirement in terms of having a dissemination component. Brochures, news clippings and other public awareness items were offered as evidence to be in compliance with this variable.

Corrective Actions:

No corrective actions are necessary.

29. DISTRIBUTION OF FUNDS AMONG ELIGIBLE SCHOOLS AND CHILDREN

Authority: *Public Law 94-142*
1974 Amendment to P.L. 89-313
P.L. 93-380, ESEA,
Section 121(c)

Findings:

SEA staff indicated that there were 2 agencies eligible to participate. Some of the eligible projects had chosen not to participate. The number to participate had continually been in a state of flux. Team members were shown data to support the fact that all children included in the ADA received some benefit, SEA staff members were asked to share in writing a proposed distribution of some monies with the BEH policy officer for the sake of clarification. Essentially, with the aforementioned exception, the requirements of this provision were met for the current fiscal year.

Corrective Actions:

No corrective actions are necessary.

30. USE OF FUNDS TO SUPPLEMENT AND NOT SUPPLANT

Authority: *Final Regulations*
Title I, Section 116.40

Findings:

Evidence indicated that Federal funds have been used to supplement and not supplant.

Corrective Actions:

No corrective actions are necessary.

[illegible]
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June 14, 1979

Mr. Thomas Irvin
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Washington, D. C. 20202

Dear Mr. Irvin:

I have discussed the meaning of §121.a(504) as it applies to New York City's evaluation and placement mechanism with Gerald Boyd and, most recently, Lucille Slager of your Office, who recommended that I address this letter to you, seeking confirmation of conclusions she and I reached in our telephone discussion.

In sum, regulations of the New York State Commissioner of Education require parental consent prior to evaluation, but not prior to placement. The question I posed to Mr. Boyd and Ms. Slager was whether §121a.(504)(c)(2)(i) requires that an impartial hearing be initiated by the Board in instances where the parent does not respond to notification of the placement recommendation.

It is my view, and the view of the New York State Education Department's Office of Counsel, confirmed orally by Ms. Slager, that (c)(2)(i) presents us with an option to convene an impartial hearing under these circumstances, but that such a hearing is not mandated. I would appreciate your confirmation of this view. If you have any questions, please contact me at (212) 596 5833.

Sincerely,

DAVID M. WIRTZ
Counsel and Director

DMW:m

Exhibit - 2

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF EDUCATION
WASHINGTON, D.C. 20202

July 10, 1979

Mr. David M. Wirtz
Board of Education
of the City of New York
Office of Legal Services
116 Livingston Street
Brooklyn, New York 11201

Dear Mr. Wirtz:

This is in response to your letter dated June 14, 1979, in which you requested clarification of Section 121a.504(c)(2)(i) of the implementing regulations for Part B of the Education of the Handicapped Act as amended by P.L. 94-142. You asked whether that Section required that "...an impartial hearing be initiated by the Board in instances where the parent does not respond to notification of the placement recommendation," which is viewed as an implied refusal to consent.

According to Section 121a.504(c)(2)(i), the initiation of a hearing procedure is one option open to a public agency when a parent refuses to consent and "...where there is no State law requiring consent before a handicapped child is... initially provided special education..." In such cases the public agency may elect to use the hearing procedures outlined in Sections 121a.506 —— 121a.508. Similarly, a State may elect to establish an alternate procedure in overriding a parent's refusal to consent.

I hope that this information is helpful to you. I you have any other concerns regarding this matter, please let me know. I can be reached at (202/245-9405).

Sincerely,

William Tyrrell
Chief, Policy Section
State Policy and Administrative
Review Branch, DAS
Bureau of Education for the Handicapped

cc: Louis Grumet
Thomas B. Irvin
Gerald Boyd
Ron Reilly

Digest of Inquiry
(May 22, 1979)

■ What is the obligation of LEA to pay for private psychotherapy of handicapped student; is psychotherapy a "related service" under Pub. L. 94-142 and/or § 504?

→ These letters have been edited to eliminate extraneous and irrelevant material.

Digest of Response
(June 5, 1979)

✔ Where "psychotherapy" can be provided, under state law, by someone other than a psychiatrist (*e.g.*, psychiatric social worker) and psychotherapy is needed to assist handicapped child to benefit from special education, psychotherapy might be considered a related service under Reg. 121a.13.

✔ The general issue of whether psychotherapy provided by a psychiatrist might be an appropriate related service is under study by BEH.

Text of Inquiry

Thank you for your letter dated May 9, 1979.

Your letter states that the obligation of a local educational agency (LEA) to pay for private psychotherapy for a handicapped student is at this time (as of May 9, 1979) unresolved. You articulate the position that the general issue of whether psychotherapy is to be defined as a "related service" under Public Law 94-142 and/or Section 504 of the Rehabilitation Act of 1973 is under study.

On April 23, 1979, I spoke with Mr. William Tyrrell, Chief of the Policy Section for the Bureau of Education for the Handicapped. Mr. Tyrrell stated to me that as of that date private psychotherapy was *not* a "related service" under Public Law 94-142. He took no position with respect to Section 504 of the Rehabilitation Act of 1973. Apparently, there may be a change in position by the Bureau of Education for the Handicapped relating to the definition of "related service" under Public Law 94-142. I do look forward to learning the position(s) of your office with respect to the definition of "related services" under both statutes as soon as a new position(s), if any, is (are) formulated.

Text of Response

Thank you for your May 22 letter. I shall attempt to clarify any misunderstanding you might have regarding BEH's position on psychotherapy, under Part B of the EHA, as amended by P.L. 94-142.

First, psychotherapy is *not* listed as a related service under either the Act or regulations. However, the comment following Section 121a.13 of the regulations states:

> The list of related services is not exhaustive and may include other developmental, corrective, or supportive services (such as artistic and cultural programs, and art, music and dance therapy), if they are required to assist a handicapped child to benefit from special education.

The term "psychotherapy" can create a semantic problem, since in some States (and with certain professional disciplines) "psychotherapy" might be provided by someone other than a psychiatrist (*e.g.*, a psychiatric social worker, etc.). In such cases, the provision of psychotherapy by someone other than a psychiatrist could be considered to be an appropriate related service under the regulations—if the service is needed to assist a handicapped child to benefit from special education.

Exhibit-3

Second, the general issue of whether psychotherapy provided by a psychiatrist might be an appropriate related service *is* under study. The critical point to be determined is whether there are circumstances in which psychotherapy provided by a psychiatrist might be considered to be a basic related service under the Act rather than being a medical service.

I hope that this letter is helpful to you. If you have additional comments or questions regarding this matter, please let me know.

Thomas B. Irvin, Chief
State Policy and Administrative
Review Branch, DAS
Bureau of Education for the
Handicapped

Inquiry by: Judith M. Grayson, Director
California Regional Resource Center
600 South Commonwealth Avenue
Suite 1304
Los Angeles, CA 90005

Digest of Inquiry
(November 27, 1978)

■ Can student served by classroom teacher pursuant to IEP but without special education services be counted as "handicapped" pursuant to Pub. L. 94-142?

■ Can student taught by classroom teacher possessing special inservice training be counted as "handicapped" pursuant to Pub. L. 94-142 whether or not the student has an IEP?

■ Can students served by resource teacher offering special education services to students identified as handicapped, having IEPs, and served in the regular classroom be counted as "handicapped" pursuant to Pub. L. 94-142?

■ Can handicapped student receiving special education through Title I program be counted for both Title I purposes and as "handicapped" under Pub. L. 94-142?

■ Can child who once received special education, but is now receiving regular class instruction by remediation be counted as "handicapped" under Pub. L. 94-142?

■ Can learning disabled students whose special education services consist of monitoring their academic performance in regular classrooms to detect possible new learning problems be counted as "handicapped" under Pub. L. 94-142?

Digest of Response
(June 7, 1979)

✔ In order for a student to be counted under Pub. L. 94-142, all the applicable provisions of the law must be

STATEMENT OF PAULA J. HEPNER, COORDINATOR, ADVOCATES FOR CHILDREN OF NEW YORK, INC.

Ms. HEPNER. Chairman Simon, I will be happy to have our statement entered into the record. In fact, what I would like to do, while not sounding like rebuttal, is to focus on a few of the remarks made earlier by Dr. Gross because we feel there were several important facts brought out that were not particularly stated as the statistics we now have as a result of new major law suits in New York produced.

Mr. SIMON. We will be happy to enter your statement in the record.

Ms. HEPNER. I should first introduce you to Advocates for Children, which is a private not-for-profit organization of parents and citizens who for the past 10 years have been aggressively involved in assuring appropriate educational services and programs for the children in the city of New York.

Advocates for Children presently handles an individual caseload of about 1,000 per year of which 50 percent are now handicapped children seeking services under Public Law 94–142. Of the handicapped cases that we handle, over one-half of them in the past year have involved children who simply have not been timely evaluated, or timely evaluated but not timely placed in programs. That is actually the sole cause of one of the major law suits that we have going on in the city of New York right now, which was concluded in December.

I would like to mention the *Jose P.* and the *Laura* cases because those are the two cases that have brought to light some of the statistics that I would like to put into the record.

Jose P. was a case brought in 1979. It was brought on behalf of all handicapped children who were on the so-called infamous waiting list of New York. This brings me to the first thing that Dr. Gross mentioned about the waiting list.

As a result of the final judgment in *Jose P.*, the board of education is required to do extensive monitoring of the status of evaluation and placement of handicapped children in this city. The most recent report of the board of education gives our figures for April 1, 1980, and they indicate that there are still approximately 15,000 children on the waiting list waiting for evaluation, or waiting for placement. It is not the 6,000 to 7,000 that Dr. Gross indicated earlier.

It is also incorrect to say that the waiting list at one time was between 35,000 and 40,000 children in New York City. The waiting list issue began in 1973 when a group of handicapped children first approached the New York State Commissioner of Education, and said, essentially, we are not getting our services under New York law.

At that time, the class certified by the commissioner of education numbered 14,000 children approximately. So since 1973 to now we have never had the 35,000, but we are still struggling at the same basic rate of unplaced or unevaluated children.

Mr. SIMON. So that I understand you, in 1973 you had how many?

Ms. HEPNER. There were roughly 14,000 children.

Mr. SIMON. You are saying that this has been held constant.

Ms. HEPNER. That has been fairly constant over the years. In fact, we have statistics which are only at the moment handwritten, but we could supply them to you, which more or less show you the fluctuations around that figure.

There was a reference earlier to the tremendous increase of children in special education, particularly the learning disabled. I should point out to you that in New York, although we have had an education law that mandated services for all handicapped children for quite a while, the New York law never took into consideration learning disabled as a category falling properly within the handicapped law until Public Law 94-142 came into being.

As a result, the numbers of children that came into the system as a result of that definition is largely responsible for the tremendous increases of handicapped children we are seeing, but it is not as a result necessarily of an aggressive outreach, or an aggressive finding system. It is the result of the addition of the category which we did not have before.

I would like to move on to something much more substantive, and that is Dr. Gross' statement addressed to the burdensomeness of the due process procedures in the education law.

Advocates for Children has been one of the most aggressive groups in New York trying to make use of those due process procedures to benefit the 500 families that we see a year who do not have their children in special education programs.

We have statistics in New York, although I did not bring them with me, but which I could supply also, that show the percentage of families that actually get due process hearings. The percentage of families that do get the due process hearings is very small. The reason for that, as was found in *Jose P.* and in the *Laura* case, parents are not properly notified of all of their rights, or all of the procedures to enforce them.

Those parents who do try to enforce them are not notified of their rights until they have assistance from groups such as ours, or legal aid societies, and therefore go unrepresented. The hearings that happen as a result of that are rather a pro forma thing, and we have found from our own data collection that often parents who do go unrepresented end up with the same program recommendation that they went in there to challenge.

So we would like to suggest to you that if it were not for the due process procedures, the few people out of the vast numbers of children in New York City who are in the special education system, the few people we do represent, we could not have any measurable impact if it were not for the due process procedures. We do not believe them to be bankrupting the board of education, or the division of special education.

I think I would just put one illustration of how the access to the due process rights has helped us. Just this past December we had a large number of teachers in resource rooms handling learning disabled children cut from the budget. There were, in fact, 39 teachers terminated from the board of education.

In the following few weeks, *Jose P.* ordered 500 resource rooms to be operating in New York City by February 1980, and the board was then forced to go out and hire those teachers back.

Just this spring, our organization has represented in 2 months 30 families who have learning disabled children who have no resource rooms, who, notwithstanding *Jose P.*, were forced to proceed to impartial hearings, used the due process mechanisms to get the class opened up for their children.

So we are not in any way eager to see Congress do anything to disturb the rights that the law presently has.

My final remark is addressed to the subject of related services. I would like to rely on Advocates for Children's 10 years of experience in this business of education to point out, and I am sure you are very familiar with this, when the education law was being discussed there were hearings all over the country.

In fact, nine hearings were held, and many, many professionals from a variety of disciplines, therapy disciplines, came and spoke about the need for the therapeutic component that is a necessary element of an educational program, for an educational program for any handicapped child.

The remarks that we heard here this morning are reminiscent of the idea that handicapped children should be educated so long as they can go into social studies classes, do math, and take gym; but if we have to spend more money because they need additional services from the therapeutic disciplines, that is not education.

To me and to the rest of the advocates in this room, we all feel that that is a rather aggressive statement, and in fact totally contrary to the spirit and letter of Public Law 94–142.

That the board of education claims that they are spending millions of dollars on related services may be so, but I would want to call to your attention the data coming to us from *Jose P.* which indicated that the related services that are being provided substantially up to par by the board of education are the two related services of transportation and speech services.

Transportation, as we all know because we drive our cars, is getting very expensive. If millions are spent, I suggest that we look into exactly where those millions are going. I would hope that we would not find that they are going into fuel costs.

Recent negotiations in *Jose P.* indicate that the board of education has only four occupational therapists who work full time for the dozens of children in this city, two part-time physical therapists for the thousands of children in this city. So the statement that millions are being spent trying to aggressively comply with the law, to us seems most erroneous.

I thank you for inviting us, and that is really all I have to say.

Mr. SIMON. I thank you all for your testimony.

I have a few minutes here yet.

When you contact BEH, what kind of response do you ordinarily get?

Ms. STOTLAND. We call it the trash can syndrome. On at least three different occasions, in fact more than that, as reflected in my written testimony, we have filed formal complaints in which we set out the causes of action, what the basis is, and factual basis is. On the whole, we get no response at all.

Mr. SIMON. You should not have to file a formal complaint in order to get some kind of response. If the parents, Mr. and Mrs. John Smith, write BEH, what kind of response do they get?

Ms. STOTLAND. On the whole, Mr. and Mrs. John Smith don't even know that BEH exists. On the whole, they go to counsel, and counsel has a tendency to do things in writing, being lawyers as we are. I would say that usually if we get a response, we get an oral callback. Usually the regional review officer will call us, on some occasions often 6 or 7 months after we file the complaint, if at all. We then explain or amplify our comments and our problems.

In the three instances there, which are the three instances in which we filed formal complaints with BEH, we have gotten no written response and we have gotten nothing beyond the call. Usually we get a series of calls from series of regional reviewers, each asking the same questions, each giving the same answers. To date we have gotten no written response on anything we have filed with BEH. This is one system.

The second system, which is the State system which is set up pursuant to the regulations, which in Pennsylvania is called, the Office of Regional Review, has a parallel in every State because it is mandated in the regulations, much the same thing. The parents call; usually they get no response at all. The complaint is buried.

If something is issued in writing, if they are lucky, they will get an interim investigation. But it is statewide known, and if you go to a parent meeting and say, "If you have problems, file with the Office of Regional Review," the clients will laugh at you because they know that they will get no response from the Office of Regional Review.

Ms. **Hepner**. Chairman Simon, our experience has been very much the same. In fact, in our testimony there is an example of a particular situation that occurred here last summer when the board of education tried to introduce a procedure entitled, the acquiescence letter. What that meant was, the Committee on the Handicapped sent out a program recommendation, and said: This is the class for your child, and this is the classification of the handicapping condition we have labeled your child with. If you don't answer in so many days, your child will automatically be placed in that program.

We went to BEH to get clarification on whether that was a legal policy because we felt that it was entirely against the regulations requiring parental participation. We contacted BEH many times by telephone and never get an answer. We did get sent off to the State authorities, and we also never got an answer from them. Finally, we wrote a formal letter which has never been answered.

Toward the end of the summer, we went to Judge Nickerson in *Jose P.*, or the special master person who was appointed, and discussed this, and the letter was withdrawn. The procedure was withdrawn, but it was not because of any enforcement on the part of BEH.

Ms. **Stotland**. The interesting thing—and the reason that I chose the examples in the oral statement that I did, the expulsion of handicapped children, or disciplinary action of handicapped children, the extended school year problem—these two examples, and there are some others, but these two particularly are issues that are being litigated nationally.

There must be six outstanding extended school year lawsuits, and at least three times that many administrative proceedings. There are at least four lawsuits around the rights of handicapped children who are faced with disciplinary proceeding. In every instance, BEH has been approached for some kind of national direction or interpretation so we need not litigate these at random and come up with different results. In every instance, the usual response and the one I like the most is: We are waiting to issue a joint policy with OCR. We never get anything with OCR, and we never get a joint policy.

Mr. SIMON. That has not changed since your formal statement was prepared?

Ms. STOTLAND. Not at all. It may after people see my formal statement, but I doubt it.

Mr. SIMON. Your statement says, on March 6, 1979, you received a letter indicating that in the very near future, they would be issuing a joint statement. You have heard nothing on that?

Ms. STOTLAND. No; this was right before my trial, and I said, please don't make us go through a 2-week trial if we don't have to. Not only have I not received it, but there have been six more lawsuits filed, and no one else has received it either.

This is just not a way to run a system. We get no guidance. We get no direction. The resources that are going just on the issue of extended school year programing alone just boggle the mind. I have gotten calls in the last 7 months from 30 States, and it must have been every State in the Union by the time I got engaged in this matter, all of whom were struggling with this issue.

Mr. SIMON. I don't know if BEH is represented here today.

I have one final question, if I may, to all three of you. I don't know if you were here when I asked the question of the gentleman representing the budget arm of the mayor here.

I happen to be both on the Education Committee and on the Budget Committee. The argument that is used against me when I try to get increased funding, as I regularly do with very limited success in that area, is, if we increase funding for Pennsylvania or New York City from 12 percent to 15 percent, in fact, we are not going to be helping handicapped children. We are simply going to be relieving a financial burden for the communities. We are not really going to be helping the people that I profess we should be helping.

How would you respond?

Ms. WILLNER. I think that waste and mismanagement at 110 Livington Street, where we have our board of eduction, is a thing that has been documented for years. The Educational Priorities Panel has spent the last 5 years doing management analysis, doing budget analysis, trying to hold them accountable for the way the funds are spent.

I think that it is not a reason not to hand out the money, because it will not be spent. It is the responsibility of the child advocates in the different localities to insure that when the money comes down, we are keeping track, as well as the Federal arm, if it is BEH or whoever, is keeping track to insure that the services that are supposed to be funded with these moneys are indeed provided to the kids.

Mr. SIMON. If, for example, New York City got, let us say, another $20 million from the Public Law 94-142, you monitor that so that you would be doing some screaming, so to speak, if that $20 million did not go into these kinds of services.

Ms. WILLNER. Absolutely. There are such structures that exist all over the country. Children's advocates are realizing that they have to be able to take that responsibility, understand the bureaucracy, and understand the functioning of budget, and not take things on good faith any longer.

Ms. STOTLAND. Another thing is that there is a nonsupplanting requirement in the act, which is a protection against that idea. You cannot reduce the local effort, or you would not be able to collect the Federal moneys. So if it is a question of substituting for, it cannot be. It has to be in addition to. Obviously, it can only work is you monitor it.

Ms. HEPNER. I would have to defer to the statement by EPP, because they do our fiscal monitoring. We are a member of EPP, and I would accept the statement.

I would also simply add that at this very moment we are so short of everything except what is absolutely mandated in Public Law 94-142 that if the money were here, I can certainly see the enormous needs where it could be applied.

Ms. WILLNER. I want to bring up another point in this regard on something that is going on in New York City because of the budget cuts that we are being asked to sustain, and it is something that we are seeing as a domino effect around the country.

Right now because of the inadequate funding for Public Law 94-142, we are really having a divide and conquer strategy in our schools, and this is very disruptive. Right now the mayor is asking the board of education, for example, to remove nonmandated transportation services to so-called, normal children, while at the same time we are spending millions of dollars on transportation door-to-door for handicapped children.

We are being asked to increase class size for most classes. When a parent walks into a school, and sees his first grader in a class of 40 children, knows that that child had to walk 1 mile to get to school, and sees the yellow bus coming with the handicapped who is going into a handicapped class of 8 or 9, there is very little way to explain the special needs of that child to a parent, and to explain that you are very lucky because your child is normal.

We know the needs of these children, but we do have a situation in our schools where we have very divisive populations, and parents of regular children are looking to the special education as a pot of money that they want to seize upon. This is being exacerbated by the funding problems.

Mr. SIMON. I don't think there is any question about that. We see that on the Budget Committee very clearly also.

We want to thank you.

This concludes our hearing. We appreciate your testimony, and the presence and interest of all of you. We look forward to hearing from panel 4 in the near future.

The subcommittee stands adjourned.

[Whereupon, at 11:55 a.m., the subcommittee adjourned, to reconvene at the call of the Chair.]

FIELD HEARINGS ON THE EDUCATION FOR ALL HANDICAPPED CHILDREN ACT

FRIDAY, JUNE 6, 1980

House of Representatives,
Subcommittee on Select Education,
Committee on Education and Labor,
Chicago, Ill.

The subcommittee met, pursuant to notice, at 9:10 a.m., in the Magnuson Auditorium, Rehabilitation Institute of Chicago, 16th floor, 345 East Superior Street, Hon. Paul Simon (chairman of the subcommittee) presiding.

Member present: Representative Simon.

Staff present: Judith Wagner, staff director; Jane Baird, research assistant; William Clohan, minority assistant education counsel; and Jennifer Vance, minority legislative associate.

Mr. Simon. We are holding oversight hearings on Public Law 94–142 and we are pleased to have a hearing here in Chicago. Our first panel of witnesses will be two old friends, Senator Arthur Berman, who was a member of the State House of Representatives when I was in the State Senate, and Representative Gene Hoffman.

I might say, for the benefit of these witnesses and the others, we will enter your statements in the record. If you will summarize them that will be fine. You may proceed as you wish.

We will hear from the witnesses of each panel, and then ask questions.

Senator Berman?

STATEMENT OF STATE SENATOR ARTHUR L. BERMAN, STATE OF ILLINOIS

Senator Berman. Congressman Simon, thank you very much, first of all, for holding this meeting in Chicago, and at this site. I think it is very apropos because of the wonderful job that the institution has done regarding the handicapped.

I will summarize my remarks. They consist of about four points.

First, our problem with Public Law 94–142 is not with its goals. I personally support them strongly. I was the principal sponsor and architect of the legislation that brought Illinois into conformity with Public Law 94–142. Our problem is not with its purposes. Our problem is more on a practical level. In order to accomplish the laudatory goals of that legislation, it is going to take money. As you are well aware in the original passage of the legislation in 1975 there was an authorization set forth that would have provided, under the formula, a graduated funding of 5 percent, 10 percent, 20 percent, 30, and 40 percent in the respective first 5 years of funding based upon the national average per pupil expenditure. The 40 percent was supposed to maintain thereafter.

Contrary to that authorization, the funding was 5 percent as it should have been the first year; 10 percent as it should have been the second year; but instead of 20 percent the third year, it went only to 12 percent. The fourth was 12.8 instead of 30 percent, and this year it is 14 percent instead of 40 percent.

I know of your efforts to raise those levels. You and I and Representative Hoffman were together in Washington as part of that battle. That translates to a dramatic amount of money as far as the shortfall of the flow of funds from Washington to Illinois. In those 4 years, it represents $206 million difference between the authorization levels and the appropriations levels for Illinois alone.

I am concerned as to where we are going from the 14 percent rather than the 40 percent. Are we going to be stuck at 14 percent from here on in? The rhetorical question is: How can the difference between the 40-percent level of funding and the 24-percent level of funding really be justified?

The problem of the partnership concept is undermined—the partnership concept of the State, the Federal, and the local, participating in delivering all of the services necessary for an adequate and appropriate education for handicapped children is undermined when one segment of that partnership is not able to deliver the dollars that they had held themselves out to deliver when the bill was originally passed.

I would, just as a footnote to the funding, point out that we in Springfield constantly hear the complaints of local school districts regarding mandates without funding. It is in effect what Public Law 94–142 has done.

As a footnote, I am sure you are aware that the general assembly last year passed what we call the Mandate Act of 1979. What that says, in response to the complaints of local governments and school districts that we are passing laws and not funding them, is that if a mandate is passed by the general assembly and at least 50 percent of the cost of that mandate is not paid for by the general assembly, the local government upon whom that mandate is imposed is relieved of the obligation of delivering under that mandate.

Most local governments would have liked a 100-percent level. This was a compromise figure. I would suggest that this is an approach that Congress might look at from a very realistic point of view.

You recall, of course, Congressman Simon, when Public Law 94–142 was first passed, Representative Hoffman and I were in Washington as sort of a duet, again suggesting that if funds could not be 100 percent appropropriated immediately, the services should be phased in at the same level as the funding.

This was not responded to as far as any amendments to Public Law 94–142. The mandates were immediately imposed in September 1979, and yet we still are far from 100 percent funding even under the somewhat limited formula.

I think that we ought to look at the impact of Public Law 94–142 in urban areas; Chicago, for example. Chicago, although it is one of 1,000-

plus school districts in the State of Illinois, is unique; we all know that. I think the problem of compliance with a district as large as Chicago is unique. I would suggest that this committee evaluate approaches that would give additional assistance to large urban school districts to allow them to better meet their responsibilities under Public Law 94–142.

Third, I believe there has to be some clarification of the term "related services." We have been involved in continuous dispute both at the hearing level, and at the level of the Governor's purchased care review board, which is the agency which determines the tuition costs for private placement in Illinois.

There have been disputes between the Bureau of Education for the Handicapped, the Office of Civil Rights and the State board of education, certainly impacting upon the parents and the children as to what are related services.

We have legislation that has been introduced, but like much legislation that seeks to improve a situation, we have all phases of opinion on it. I think that it is an improvement over the present situation. The stronger proponents think that it does not go far enough. Of course, the Bureau of the Budget thinks that it goes too far because it costs money.

I think that the question of what related services includes, especially in relation to the word "therapy," should be clarified either by regulation or by statute.

One very serious problem which we recognized several years ago, but I think that it is coming to fruition now, is the problem of third-party payments. Insurance companies walking away from benefits that they otherwise pay because of the relief granted under Public Law 94–142 to parents whereby they are no longer required to pay for certain services.

The withdrawal of those benefits by the private sector is going to have a dramatic fiscal impact on governments, whether it be the school board, State government, Department of Mental Health, State board of education, and the Congress. That is a very serious question.

I have attached a copy of a letter by a major insurance carrier which explains their position regarding the nonpayment of benefits which previously have been paid, but which will no longer be paid under that policy because of Public Law 94–142. This is a problem that I think we alluded to early on in the legislation, but is certainly going to have a major impact.

Again, in closing, I appreciate your bringing your committee here. I acknowledge gratefully your leadership in this field for a number of years. On behalf of myself personally and for the people of the State of Illinois, we are very proud to have you as our leading spokesman in Washington on behalf of education.

Mr. Simon. Thank you very much. Indeed, it is good to be with you once again.

We will now hear from another old friend, Gene Hoffman, who is identified here as the chairman of the Illinois School Problems Commission.

[The prepared statement of Arthur L. Berman follows:]

PREPARED STATEMENT OF STATE SENATOR ARTHUR L. BERMAN, STATE OF ILLINOIS

Congressman Simon, members of the committee: Thank you for this opportunity to appear before the Subcommittee on Select Education. We appreciate the hearing being held in Chicago so that those of us in Illinois that live with Public Law 94–142 have a chance to discuss our problems with you.

I am a strong advocate of special education, and am in total support of offering needed services to those children that require it. I was the principal sponsor and architect of legislation in the General Assembly that brought Illinois into conformity with Public Law 94–142; and have consistently taken the stand of providing necessary programs to handicapped children.

Now that I've made that clear, let me tell you what our problems are.

Our foremost difficulty with full impementation of 94–142 is that of adequate funding levels promised, but not delivered by the Federal Government.

Under the funding authorizations set out in Section 611 of 94–142, the states were entitled to an increasing level of funds, based on the national average per pupil expenditure, (NAPPE) of 5, 10, 20, 30, and finally 40 percent, respectively, in each of the first five years, and at 40 percent each year thereafter. The dollar amounts that have in fact been appropriated tell a far different story. The percentages started at 5 percent the first year, 10 percent the second year, 12 percent (instead of 20 percent) the third year, 12.8 percent (instead of 30 percent) the fourth year, and finally, a projected 14 percent (instead of 40 percent) the final and permanent year.

Just what does this mean to Illinois in actual dollars? For the year ending September 30, 1980, we received $46.1 million in Public Law 94–142 funds. That figure would have been $76.9 million if Congress had supported the level promised. Instead of the projected $48 million for the fiscal year ending September 30, 1981, Illinois would have received $113 million. For fiscal year 1982, now being considered, Illinois' projected share will be only $59 million. This figure should have been $169.7 million, had authorized levels been met. In those three years the difference between the levels indicated in 1975 and the levels delivered in Illinois is $206.5 million.

Will the final year of funding level projected at 14 percent be the percentage that we can now expect to receive permanently? How can the difference between 40 and 14 percent be justified?

These dollar amounts translate directly into quantity and quality of services offered; into taxpayer protests on property taxes; and into local school district problems of complying with the Act. It is no wonder that anger and frustration are evidenced when Public Law 94–142 mandates are discussed.

The promise of the Education for All Handicapped Children Act is an exceptionally important one, and parents have taken the Federal commitment literally that a free and appropriate education will be delivered to their children at no cost.

On the surface, that statement in the Act is in itself a remarkable one, and I enthusiastically applaud it. I not only applaud it, but have worked for several years now to fulfill the intent of Congress and the General Assembly in delivering the needed services to this important segment of our population. But ladies and gentlemen, the pledge of 94–142 is based on a partnership between federal, state and local units of Government. The local school districts in Illinois and the State of Illinois have provided more than their share of that important promise, but the Federal Government has not.

I sometimes find myself being put in the position of telling parents, state officials and local school districts that we have done our share, but that the feds have failed to provide their portion of this three way partnership.

Mandates to local school districts always create an instant cause for resistance, as you know, and frequently a negative backlash develops as the mandates are enforced. When adequate funding levels are not provided, even stronger reactions occur. In Illinois, the General Assembly passed the Mandate Act of 1979, which offers a state commitment regarding educational mandates. That law says that if at least 50 percent funding is not offered with a mandate, then that particular program need not be provided by the local district. The need for this Act arose out of frustration and anger by local school districts relating to educational mandates imposed by the legislature.

I want to underscore the inability of state and local school boards to comply with continuous mandates given to them by legislative bodies. I urge you to insist that Congress fulfill the promise that has been made to all of us. The authorized levels must be appropriated in order to comply with the intent of your colleagues in passing 94–142.

Another problem that should be looked at is that of large urban area's compliance with 94–142. Although cities like Chicago are, by some, considered "just another school district", in reality that is not true when they try to implement a wide ranging mandate like 94–142. I am not asking for special consideration of enforcement procedures of this Act, but I am suggesting that additional resources be made available to assist the large cities in complying because of the unique problems they encounter.

In addition to funding problems, there is another major area that is causing us concern. The Federal Act is not clear on the issue of "related services." We have had a great deal of controversy surrounding the definitions of related services to the handicapped. I have attached to this testimony a letter dated October 9, 1979, to Commissioner Edwin Martin at the Bureau for Education of the Handicapped, detailing the lack of clarification of 94–142 relating to this issue. It points out the conflicting language now present in the Act.

For example, emotionally disturbed children requiring "therapy" are frequently not provided with that therapy because under a strict interpretation of the language in the act, psychiatric and psychological treatment would not be included in the definition of related services. The funding mechanism for providing these services, at no cost to parents, is currently being worked on in the Illinois General Assembly. In the meantime, however, the Office of Civil Rights has promulgated a series of findings relating to this issue in Illinois. In addition, class action law suits have been filed concerning the level of related services provided.

The language is unclear, and the regulations do not deal with the issue in a definite manner. We in Illinois, along with the other states, I assume, need to have better direction from the Congress and the Education Department as to the intent of 94–142.

On another issue, the question of third party payments and insurance company participation in paying for some services has emerged as a major potential problem. In attachment 2, I have enclosed a copy of a letter written by the Aetna Insurance Company to their policy holders. Has the subcommittee investigated the participation by Insurance Companies? Will these companies be allowed to walk away from clients who happen to have handicapped children in their families? Will there be any language or regulations forthcoming? What is the stance of Congress on this issue? Will this subcommittee be making any recommendations? Local school districts and state governments cannot be expected to pick up the costs heretofore provided by insurance carriers. That factor is not addressed in 94–142, and clarification will become very important during the coming year. I would strongly suggest that your committee examine this issue carefully as to its impact on school districts and state budgets.

Your willingness to bring a Congressional hearing here is most appreciated, and I am grateful for the opportunity to testify on these issues. I would be pleased to respond to your questions.

ATTACHMENT No. 1

OCTOBER 9, 1979.

EDWIN W. MARTIN,
Deputy Commissioner, Bureau of Education for the Handicapped, Department of Health, Education and Welfare, Office of Education, Washington, D.C.

DEAR COMMISSIONER MARTIN: Although the implementation process of Public Law 94–142 is primarily a state/local issue, we need federal clarification and perhaps intervention on several points.

In Illinois statutes, there exists a rate-reviewing mechanism called the Governor's Purchase Care Review Board. The responsibility of this board is to set allowable costs for private residential and day school facilities serving handicapped children. The major problem is in the definition and interpretation of "allowable" costs, and this problem has caused a great deal of concern for all parties involved.

There are three major issues, all inter-related, that we feel your office should address. Those issues are: (1) The definition of "allowable" costs for related services, (2) the question of parent financial participation, and (3) conflicting code language in Public Law 94–142 and Titles XIX and XX.

In the first issue, that of determination of allowable costs for related services, section 121 a. 13 states that counseling and parent counseling and training could be considered a related service.

The language in the regs does not say that therapy, psychotherapy, psychiatric counseling, ongoing medical services, glasses, hearing aids, prosthetic devices and so forth could be allowed. The footnote attached to 121 a. 13 in the comment section would seem to allow such costs, but can easily be interpreted from a different perspective.

The Governor's Purchased Care Review Board in Illinois strictly adheres to the language cited in the body of 121 a. 13 in allowing costs for related services, and disregards the comment section that uses the word "may". It appears that the intent of Public Law 94-142 is to be all inclusive; however, lack of clarity within the body of this particular section allows for varying interpretations.

Therein lies the problem. The rulings made depend on the perspective of the rule-maker; and the language, as stated, can be open to a particular point of view and interpretation.

I am asking the Bureau of Education for the Handicapped for either all-inclusive language specifying detailed related services allowed, or for a general "linking" statement saying that anything outlined in the individual child's IEP should be allowed.

I do not know how other states are dealing with the particular problem, but I am well aware that in Illinois, it has become a serious concern.

I understand that changes in the regs or in the act itself are not advisable at this time; but perhaps a general order from the Bureau of Education for the Handicapped to the states would alleviate some of the problems we are experiencing.

In the second issue, that of parent's financial participation in total costs, the regs say in 121 a. 401, that responsibility shall lie with the SEA at "no cost to parents". The Illinois Governor's Purchased Care Review Board has recently promulgated a rule that requires parent financial participation for "non-allowed costs". As a side issue, there is no provision within that rule providing for those parents who are unable to participate; but whose children must be placed, according to the IEP, in a specific facility offering specific services.

Once again, the question of "allowable" costs arises, and once again, the interpretation is not clear. The Governor's Purchased Care Review Board has chosen to use its own understanding of the regs in requiring parent financial participation.

In regulation 121 a. 302, the public agency is required to pay for nonmedical care, tuition, and room and board; leaving the impression that parents can pay towards medical costs. Is there a conflict? Or is this particular language open to interpretation? Again, is the intent of Public Law 94-142 being followed? Clarification and specific comments from your office on this particular issue is desirable.

The third issue is that of conflicting statutory language in Titles XIX and XX and Public Law 94-142. Federal language is XIX and XX, according to Illinois interpretation, require some parental financial participation, but 94-142 says "at no cost to parents". Which Federal language takes precedence?

The Governor's Purchased Care Review Board has chosen to interpret that parent financial participation is allowed in 94-142, as stated in Illinois' interpretation of Titles XIX and XX. Their viewpoint again relates to the question of "allowable costs" for related services.

And again, is the intent of 94-142 being followed, and what interpretation will the Bureau of Education of the Handicaped recognize?

A fourth issue emerging is one of third party payments, specifically from insurance companies who may drop clients because of the demands in 94-142. This issue will soon become a major one across the country, and your comments on the subject are welcome.

The Department of Specialized Educational Services of the State Board of Education concurs with me in bringing these problems to your attention.

Your response would be appreciated as soon as possible.

Sincerely,

ARTHUR L. BERMAN,
Senator, 11th Legislative District.

ATTACHMENT NO. 2

AETNA LIFE & CASUALTY,
Hartford, Conn., March 11, 1980.

Mr. JOHN J. STRAUS, Jr.,
Illinois State Board of Education (E233),
Springfield, Ill.

DEAR MR. STRAUS: The purpose of this letter is to provide you with an explanation of our current claim practices under Aetna health benefits plans with respect to the Education For All Handicapped Children Act of 1975 (Public Law 94–142) which we briefly discussed by telephone on March 5, 1980.

It is our practice to inform the parents or guardians of handicapped children covered under the health benefits plans of Aetna policyholders or contractholders of their rights under Public Law 94–142 even though this may not have an impact on the benefit payments made under the particular health benefits plan involved. These plans generally do not provide benefits for the cost of special education. In addition, no benefits are payable for expenses incurred for related services provided or financed under Public Law 94–142 (i.e., speech pathology and audiology, psychological services, physical and occupational therapy, recreation, counseling services and medical services for diagnostic and evaluation purposes only) because charges that the parents or guardians of a handicapped child are not legally obligated to pay and services which are furnished or paid for under any law of a government are specifically excluded from coverage.

The claim practices that we have established as a result of Public Law 94–142 are intended to avoid duplicate payment while minimizing retrospective benefit denials in situations where a handicapped child incurs expenses for services that are covered under an Aetna health benefits plan which should have been provided or paid for by the public school system. We believe that this objective has been met through implementation of our current administrative procedures which are as follows:

For otherwise covered services which have already been reimbursed under Public Law 94–142, benefits will be denied under Aetna health benefits plans based on the exclusions mentioned in the preceding paragraph.

For otherwise covered services which might qualify for reimbursement under Public Law 94–142, we will notify the parents or guardians of the handicapped child of the law and urge them to pursue a request for payment through the local public school district if this has not already been done. In the meantime, we will pay benefits under the health benefits plan for up to 60 days while such a request is being pursued and we are in the process of obtaining a signed reimbursement agreement.

For otherwise covered services which might qualify for reimbursement under Public Law 94–142, we will pay benefits under the health benefits plan beyond 60 days while the local public school district application is pending provided that we have a properly executed reimbursement agreement.

For otherwise covered services that might qualify for reimbursement under Public Law 94–142, we will continue to pay benefits under the health benefits plan upon receipt of a formal denial by the local public school district. However, we expect the parents or guardians of the handicapped child to notify us if they are successful in having the application for reimbursement approved on appeal. When this occurs, the benefit payments are discontinued under the health benefits plan and the parents or guardians of the handicapped child are requested to reimburse Aetna for the amount of any retroactive payments made under Public Law 94–142.

If you have any further questions or comments regarding this matter, please feel free to contact me.

Sincerely,

S. B. GIBSON, Jr.,
Consultant,
Claim Relations, Group Division.

STATEMENT OF STATE REPRESENTATIVE GENE HOFFMAN, STATE OF ILLINOIS; CHAIRMAN, ILLINOIS SCHOOL PROBLEMS COMMISSION

Mr. HOFFMAN. Thank you very much, Congressman Simon. It is a pleasure to see you again, to have a chance to chat with you again, and share some of our concerns about Public Law 94–142.

As Senator Berman indicated, under his leadership and mine as chairman of the school problems commission, we introduced legislation through the commission to implement Public Law 94–142 into law in Illinois. We have provided copies of reports of the commission of June 1977 and June 1979, which include that particular legislation, with Senator Berman as the principal sponsor in the senate and myself as house sponsor in the house. We spent many, many hours working this out.

I will not reiterate the comments made by Senator Berman in terms of the funding. The funding is always a problem. It gave those of us who work at the State level an opportunity to get some of the same feeling, perhaps, that local school administrators have when we send a mandate down and don't send the concomitant money along to meet the needs, or to the degree that we say we are going to meet those particular needs.

I would like to dwell, if I may, and it starts on the fourth page of my testimony, on some of the local administrative problems related to the particular act.

One of the things that has happened is that, really for the first time, we have come down with a data based management system of goals and objectives and applied them to individual students. Nothing like this has ever been applied on such a massive scale in education. The implementation of this system as embodied in Public Law 94–142 at the local level is very costly.

The accountability requirements of field personnel are extremely restrictive and demand the kind of concentration to the degree that schools have not really experienced in the past. This task has required additional personnel and, of course, adding personnel is a costly item.

The mandatory involvement of parents at their convenience in the procedural safeguards within the specific timeframes, the due process hearings, the individualized educational program is difficult to administer and is conflict producing at some point in time.

For example, I have with me, and I will leave for you, some of the forms that are used in our special education district. I particularly want to draw your attention to that part of the form which indicates that parents have to agree that they have received this. They have to understand what the recommendations are. They have 10 days to waive during the what is called the preplacement period, that they agree with the evaluation, and that they have been told what their legal rights are, including their right to object to placement, and offered in writing if they requested them.

This kind of a relationship in an educational setting is something that not only educators have not faced in the past, but neither have parents. When parents come to this kind of a conference for the first time, and it comes onto them like this, they have difficulty as does the educator who has not been doing this kind of thing either, working in that kind of a setting.

Those of us who work in the legislative process, which is by its very nature a conflict kind of a situation where people are trying to work out their differences, it is quite different than the normal pattern that we have had in education, which has been a cooperative kind of endeavor.

The fact that we have the requirement to include this type of thing in the cooperative effort has a tendency to bring about a great deal of uneasiness on the part of the educators who are involved, as well as raising some questions in the minds of the parent who is involved.

Also, once these goals and objectives are set down and the time frames are set initially, if in a very short period of time the teacher who is involved believes that there ought to be more time spent on this aspect of the individual's education as opposed to that one, then they have to go back into procedure again to make the adjustments, rather than making the shift at the time that, in their judgment, is in the best interest of the student.

So the confusion and extraordinary caution regarding saying too much gets involved when you get into the related service area. For example, you cannot suggest to the parent that this or that ought to happen because if you do, then you know that you are going to be obligated for that cost. Senator Berman made some reference about related services.

We also get into the question of conflicts between the human service providers, interagency conflicts which add to the cost and reduce the direct program resources that are available to the schools. Conflicts between private-parochial and public schools regarding amounts, types, and kinds of services needed, and where they are to be delivered add further dimensions of conflict to the overall confusion and costs that are involved.

These comments should not be interpreted as a blanket condemnation of Public Law 94–142 from a local implementation point of view. Rather, they should be viewed as expressions of concern and frustration relative to the problems they have encountered.

Local personnel have pointed out to the commission in hearings that they view the process as good overall for both the handicapped and the nonhandicapped children because it provides a healthy nudging of the schools to make some change. They also anticipate that teachers will learn how to use individualized instruction better as teacher training institutions place more emphasis on this process, as well as the development of improved training and management principles will better prepare administrative personnel to manage their limited resources.

Local practitioners also point out in our hearings that they will need a lot of resources to get through this particular period of change as they make decisions on what is most important and learn better how to design cost effective programs and procedures.

This, of course, emphasizes the point that Senator Berman made earlier about the significant cutbacks in the appropriations levels from the authorized levels for Public Law 94–142. Local taxpayers increasingly are failing to support increased taxation for schools. In many cases it is not a matter of confidence in the schools, but rather a utilization, at least in Illinois, of the last remaining avenue of control they have over taxation on an individual basis.

The declined enrollments that we have had have affected the State support, and inflation has pulled them in exactly the opposite direction. As the increase in the cost of Public Law 94–142 is added on the top of all of this, this has spelled for many of them trouble with a capital T.

The recent difficulties we had in Chicago from a financial point of view, some of the pressure that brought that about was caused by the additional cost and pressure for special programs.

In conclusion, I would just like to point out that in my judgment as an educator by profession and as a legislator by avocation, I believe Illinois has done an excellent job in providing services for the handicapped. We had started early.

The problem that we face with Public Law 94–142, or one of the problems we face with Public Law 94–142 is the fact that it was structured to encourage those States that had not done a great deal to do more when they said that you could not use that money to supplant programs that you already had in place.

Those States, such as Illinois and other States which were in the forefront of special education, then were denied the use of the funds for some of the same purposes that other States that had not attempted to meet their needs to the same degree that Illinois had, were allowed to use these funds for purposes that we could not.

The public attitude toward the increased costs for government is prevalent and growing. I know you feel this in Washington in terms of the pressure for a balanced budget.

All I can suggest to you, in addition to the comments that Senator Berman and I have made in terms of the costs, is that in terms of the requirements, the rules and regulations, when the development or the modification of those take place, that we make certain that everyone is involved in that kind of discussion. By that I mean, those people who have to provide the services as well as those who are receiving the service should be involved to a significant degree so that everyone feels like they have had an opportunity to participate in the process.

As Senator Berman has indicated, I do want to thank you for breaking away from Washington after the little vote you had yesterday there, and coming out to your home State, giving us an opportunity to share some of the concerns that we have heard as we have gone around the State holding our hearings.

Thank you.

[The prepared statement of Gene L. Hoffman follows:]

PREPARED STATEMENT OF STATE REPRESENTATIVE GENE L. HOFFMAN, STATE OF ILLINOIS, CHAIRMAN, ILLINOIS SCHOOL PROBLEMS COMMISSION

Chairman Simon and members of the subcommittee: It is a pleasure to see you again, and I appreciate this opportunity to appear before you to discuss special education programs and the implementation of Public Law 94–142, The Education For All Handicapped Children Act.

I apologize for not being able to get copies of my statement to you prior to this meeting, but I don't need to tell you how the demands of a legislative session sometimes alter one's schedule.

ILLINOIS' RESPONSE TO THE FEDERAL MANDATE

For many years, Illinois has been recognized for its leadership role in providing services for children with special needs. The School Problems Commission had already embarked on a long term approach to resolving special education matters when Public Law 94-142 was signed into law. In fact, Illinois has been penalized by a law that was designed for the nation as a whole without recognizing the dramatic commitment that Illinois taxpayers and schools had made during the previous eight years.

During the months following the signing of Public Law 94-142 into law on November 28, 1975, the School Problems Commission proceeded to design a legislative package that would provide the statutory and policy changes considered necessary to bring Illinois into compliance with the provisions of Public Law 94-142. The original package was introduced on March 29, 1977, and was the subject of considerable evaluation and discussion during the 1977 session of the Illinois General Assembly. Much of this study was in conjunction with a review of the federal rules and regulations and testimony received from a number of sources, including the Commissioner of the Bureau of Education of the Handicapped. Most of the package was recommitted to committee for further study on May 25, 1977. The bills were taken up again in the spring of 1978, revisions were made as a result of further study that had occurred during the fall and winter, and those bills considered necessary to bring Illinois into compliance were signed into law on August 31, 1978.

There were a few items of unfinished business carried over to the 1979 session of the Illinois General Assembly and some continue to date, particularly in reference to the operation of the Governor's Purchased Care Review Board and an evaluation of classification as related to educational needs.

Reports No. 14 and No. 15 of the Illinois School Problems Commission are provided with, and should be considered appendices to, this statement. A more detailed report of the bills and process described above will be found in these reports.

FINANCIAL CONSIDERATIONS

Public Law 94-142 added a tremendous financial burden to the sizable allocation that was already being made in Illinois. The fact that the federal contribution was only a small portion of the actual cost of the mandate added to the continued failure to fully fund the authorization has left the State and local school districts with a huge balance to be made up from State and local sources. Illinois taxpayers and educators have responded to the need, but many are beginning to express concern as to how long this can continue before there is a serious adverse effect on other educational programs because of the additional competition for limited resources.

The first year of implementation of Public Law 94-142 was during fiscal year 1978 with a funding level of approximately $14.5 million. The contributions made by the State for fiscal year 1978 through fiscal year 1980 are shown on Attachment A. Attachment B shows the State appropriations for special education for the three fiscal years immediately preceeding Public Law 94-142 implementation.

As you know, the federal contribution was to be 5 percent of the average per pupil expenditure in public schools in the United States for fiscal year 1978; 10 percent for fiscal year 1979; 20 percent for fiscal year 1980; 30 percent for fiscal year 1981; and 40 percent for fiscal year 1982 and thereafter. The actual appropriation has never reached the promised level. Illinois would be getting approximately $76.9 million this year if the 20-percent formula were followed instead of the $46.1 million (12 percent) actually received. The percentage will be 12.8 percent instead of 30 percent next year ($48 million instead of $113 million) under present projections. We would suggest that the Congress should reconsider their practice of underfunding the mandate and raise the appropriations to the formula amounts.

Since fiscal year 1979, 75 percent of the annual grant to Illinois has been designated to flow through to local school districts based upon their census of handicapped children. The remaining 25 percent has been designated as state discretionary funds. These discretionary funds have been disbursed primarily to implement regional resource centers, supplemental room and board fees for children placed in private facilities, and state administration.

It is difficult to compute the actual cost of special education because many school districts do not keep their records in such a way as to give precise figures for all components (see Attachment C). The Chicago Public Schools point out that a significant contributing factor to their present financial plight is the excess cost of special education that must be borne entirely by the local district (see Attachment D).

LOCAL ADMINISTRATION OF THE ACT

There has been a substantial increase in the number of due process hearings and a significant increase in parental involvement. While these activities, along with preparation of individualized educational programs, may be beneficial to students and parents, they have also placed an additional demand on local personnel and resources.

Schools are based a great deal on tradition and as institutions are noted for resistance to change and inflexibility. Being tax supported and generally restricted by limited income, the quality of schools has sometimes been affected by forces over which they have no control. There is a great deal of variation among schools in spite of efforts toward equalization. This is the system Public Law 94–142 attempted to enter on a nationwide basis. Its goal to improve services for handicapped children is laudable, but the problems encountered have been substantial, although perhaps predictable. Public Law 94–142 is a data based management system of goals and objectives applied to individual students. Nothing like this system had ever been applied on such a massive scale in education.

Implementation of Public Law 94–142 at the local level is very costly. The accountability requirements of field personnel are extremely restrictive and demanding relative to anything schools have experienced in the past. To do this task has required additional personnel, and adding personnel is a costly item.

How a child enters service, the mandatory involvement of parents (at their convenience), the procedural safeguards within a specific time frame, the due process hearing procedures, and the individualized educational program are a nightmare to administer and are conflict producing at this point in time. Such additional procedures also require vast amounts of personnel time—all of which translates into a cost factor.

Confusion and extraordinary caution regarding saying too much (that might over-obligate the school district) or conflict between human services providers (interagency conflicts) also add cost and reduce direct program resources to the schools. Conflicts between private-parochial and public schools regarding amounts, types and kinds of services needed and where they are to be delivered add further dimensions of conflict to the overall confusion and costs.

The above comments should not be interpreted as blanket condemnation of Public Law 94–142 from local implementers. Rather they should be considered as expressions of concern and frustration relative to the problems they have encountered. Local personnel point out that they view the process as good overall for both handicapped and non-handicapped children as a healthy nudging of the schools to change. They also anticipate that teachers will learn how to use individualized instruction better as teacher training institutions place more emphasis on this process. Improved training in management principles will better prepare administrative personnel to manage their limited resources (since reprioritization of limited resources will become an accepted norm for several years to come).

Local practitioners also point out that they will need a lot of resources to get through this period of change as they make decisions on what is most important and learn better how to design cost-effective programs and procedures.

They emphasize that Congress must not cut back now on federal support as other changes significantly affecting school district resources are occurring simultaneously. Local taxpayers are routinely failing to support increased taxation for schools. This is not viewed as a lack of confidence in the local schools, but as a utilization of the last remaining avenue in which voters feel they can control their own destiny. In addition, declining enrollments has resulted in a reduction in state aid faster than adjustments in expenditures can be made. This, compounded by the ravages of inflation, is placing many school districts in serious financial difficulty. Add the cost of Public Law 94–142 to these events and you have trouble spelled with a capital T. Congress further reducing the level of funding of Public Law 94–142 would deplete local resources even further and produce such negative, perhaps rebellious, responses from the public that the noble intents of the law could be negated by public opinion and outcry.

We are engaged in a series of complex changes in which time, money and resources will determine the outcome. Lack of these ingredients can cause the program to falter or fail.

CONCLUSION

For over a decade, Illinois has done an exemplary job in providing services for the handicapped. These efforts do and will continue. However, the people of Illinois express the same views that you hear in every state and community relative to a growing resistance to governmental mandates without the resources being made available for the resulting costs. Also, the negative public attitude toward increasing costs for government is prevalent, and growing, in Illinois as it is elsewhere. These factors must be a part of the continuing evaluation of governmental programs, including special education.

If you would like additional information about any of the topics discussed, please feel free to contact us and we will do our best to provide whatever you need.

ATTACHMENT A

SPECIAL EDUCATION

The State of Illinois provides grants and administrative services to local school districts and special education cooperatives for specialized educational services for handicapped children. These grants and services are provided pursuant to Article 14, The School Code of Illinois. The basic goal of the State Board's Special Education Program is to provide the necessary instructional programs and supportive services to every handicapped child in Illinois in the least restrictive setting. Such services have been mandatory for Illinois students since 1969. Handicapped children are those with exceptional educational needs such as those who are visually impaired, hearing impaired, learning disabled, behavior disordered, educationally handicapped, speech and language impaired, mentally impaired, physically or health impaired, or multiple impaired. During fiscal year 1979, more than 220,000 persons were served by special education programs.

Table 5 shows the fiscal year 1978 through 1980 appropriation history of each grant:

TABLE 5.—ILLINOIS STATE BOARD OF EDUCATION: SPECIAL EDUCATION APPROPRIATION HISTORY AND RECOMMENDED FISCAL YEAR 1981 LEVEL

[Dollar amounts in thousands; fiscal years]

Special education programs	Appropriated 1978	Appropriated 1979	Appropriated 1980	Recommended, 1981	Increase (decrease), 1980–81	Percent change, 1980–81
Transportation	$28,750.0	$33,500.0	$40,000.7	$48,600	$8,599.3	21.5
Private tuition	8,400.0	7,000.0	16,000.0	16,000	0	0
Extraordinary	10,000.0	14,400.0	17,000.0	20,800	3,800.0	22.3
Personnel	106,270.6	115,000.0	119,000.0	129,000	10,000.0	8.4
Orphanages	9,000.0	12,750.0	14,100.0	17,735	3,635.0	25.8
Deaf-blind center/materials for the visually impaired	1,592.7	1,732.7	1,900.0	2,017	117.0	6.1
Total	164,013.3	184,382.7	208,000.7	234,152	26,151.3	12.6

Source: Proposed budget, fiscal year 1981, Illinois State Board of Education.

Attachment B

TABLE 6.—GENERAL REVENUE FUND

[Dollar amounts in thousands; fiscal years]

	Appropriated			Recommended, 1979	Percent change, 1978–79
	1976	1977	1978		
Adult education:					
Public assistance	14,000.0	15,400.0	15,400.0	15,400.0	0
Adult education, sec. 3-1	2,150.0	2,687.5	2,000.0	2,687.5	34.4
State	500.0	500.0	600.0	600.0	0
Gifted education	2,[illegible]	2,000.0	2,100.0	3,900.0	85.7
Area service centers	660.0	660.0	630.0	630.0	0
Special education:					
Transportation	25,000.0	27,387.5	28,750.0	35,500.0	23.5
Private tuition	7,000.0	11,578.3	8,400.0	8,000.0	(4.8)
Extraordinary services	2,500.0	9,000.0	10,000.0	14,400.0	44.0
Personnel	79,270.2	94,983.0	106,270.6	115,000.0	8.2
Orphanage tuition	3,500.0	6,000.0	9,000.0	12,750.0	41.7
Deaf-blind center	0	1,382.7	1,382.7	1,382.7	0
Materials for visually handicapped	200.0	200.0	210.0	350.0	66.7
Fellowships	250.0	0	0	0	0
Bilingual education:					
Downstate	3,000.0	3,250.0	3,450.0	4,500.0	30.4
Chicago	6,000.0	9,750.0	10,350.0	13,455.0	30.0
Pupil transportation—regular and vocational	33,[illegible]	36,444.1	39,750.0	53,150.0	33.7
Free lunch and breakfast	11,375.0	14,000.0	13,000.0	16,600.0	28.0
Vocational education	16,354.0	18,240.0	18,240.0	26,870.0	47.3
Textbook program	10.0	3,500.0	5,000.0	9,000.0	80.0
Truants alternative program	962.0	500.0	500.0	656.3	31.3
Manpower development	100.0	0	0	0	0
Median tax assessment	0	5,950.0	5,912.5	0	----------
Career education	0	0	0	500.0	----------
Comprehensive health education	0	0	0	150.0	----------
Desegregation assistance	0	0	0	16,000.0	----------
Subtotal	198,381.2	257,231.1	270,945.8	339,481.5	25.3
Interest payments	0	3,933.5	0	0	0
Total, general revenue grants	198,381.2	261,164.6	270,945.8	339,481.5	25.3

Source: Proposed budget, fiscal year 1979, State Board of Education.

ATTACHMENT C

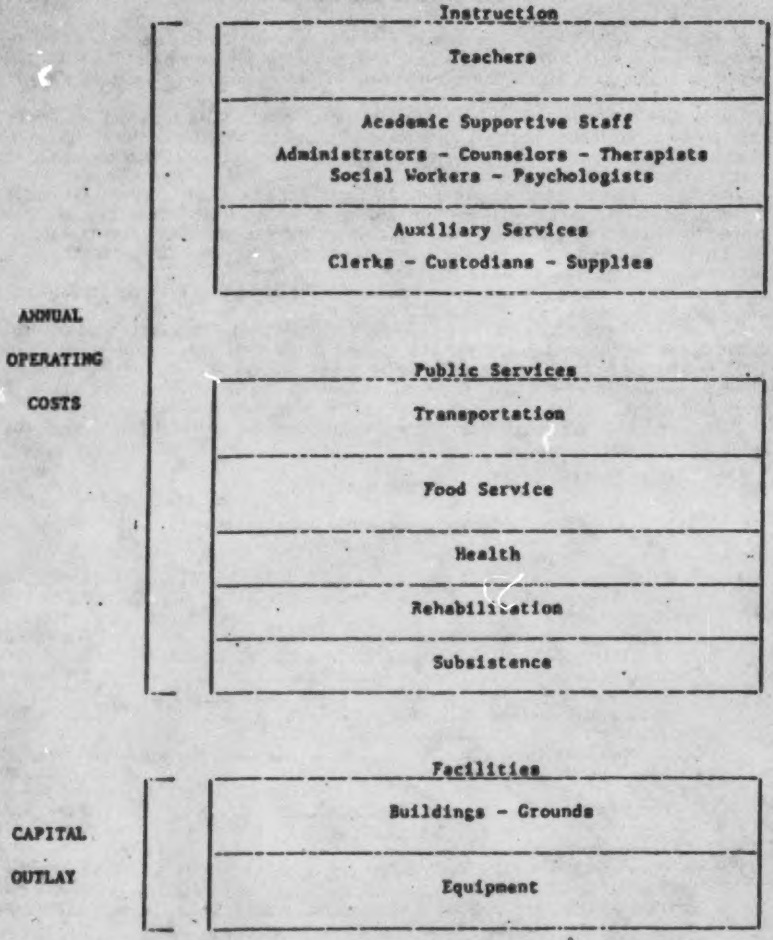
Instruction
Teachers
Academic Supportive Staff
Administrators - Counselors - Therapists
Social Workers - Psychologists
Auxiliary Services
Clerks - Custodians - Supplies
ANNUAL
OPERATING
COSTS
Public Services
Transportation
Food Service
Health
Rehabilitation
Subsistence
Facilities
Buildings - Grounds
Equipment
CAPITAL
OUTLAY

Chart II: COMPONENTS OF SPECIAL EDUCATION COSTS

Source: "Special Education: Needs, Costs, Methods of Financing."

ATTACHMENT D

FACT SHEET, ILLINOIS SCHOOL LEGISLATION

Item 2(a)

Provide special education payments (reimbursement) to local school districts commensurate with total excess costs incurred by implementing state laws and regulations resulting in the increased costs of new mandated programs and/or expansion of existing programs.

Under the provisions of Public Law 94-142, Section 121a.1, school districts are required "to insure that all handicapped children have available to them a free appropriate public education which includes special education and related services to meet their unique needs".

The Rules and Regulations to Govern the Administration and Operation of Special Education, Article II, Section 2.01, in accordance with federal mandates state "the local school district shall be responsible for providing and maintaining appropriate and effective education programs, at no cost to the child's parents, for all exceptional children who are residents therein".

The allowable costs for state-authorized special education services in the Chicago Public Schools are $170,256,356.

During fiscal year 1979, Chicago received $120,361,411 from state and federal sources for supplemental aid for the special education state mandates.

The shortfall in funding in fiscal year 1979 was $49,894,945.

This amount represents the total dollars which the local board had to spend over and above the required special education programs and related services.

Fiscal resources corresponding to fiscal demands must be available prior to the adoption of programs and services.

ITEM 2(A)

Special education costs and reimbursement

1. Allowable expenditures:	
Salaries	$101,398,069
Educational supplies	3,130,200
Fixed charges:	
Employee insurance	8,869,881
Prorated interest	5,108,900
Depreciation	2,984,500
Administration	5,785,700
Operation and maintenance of facilities	13,568,900
Transportation	17,011,487
Contracted services	11,900,000
Private tuition excess cost	498,769
Total cost	170,256,356
2. Offsetting revenue:	
Salaries ($6,250 per teacher, $2,500 per career service)	32,280,000
Transportation	16,000,000
Extraordinary care (4,366) 4,400 pupils	6,500,000
Orphanage Act 14-7.03 (1,726 pupils)	4,000,000
Federal funds	8,773,411
Private tuition	5,100,000
2000 per capita local effort × 23,854 [1]	47,708,000
Total State and Federal reimbursement	120,361,411
3. Net excess cost (line 1 less line 2)	49,894,945

[1] May 1, 1979, survey of special education students in Chicago public schools identified 50,575 pupils receiving special education instructional and related services. Of this number, 23,854 students received service within a self-contained setting; 26,721 students received service within a resource setting.

Mr. SIMON. Thank you very much. I appreciate your statements.

Let me say, if every State had done what Illinois had done, there perhaps would not have been a necessity for Public Law 94-142, although Public Law 94–142 goes beyond what Illinois had done. I can remember when we lost the bill to mandate education for all handicapped children by one vote in the State senate, and 2 years later H.B. 1407 came along.

Mr. HOFFMAN. That is right.

Mr. SIMON. As I look at your budget figures, the appropriations are not all passed yet, I gather, unless the Springfield scene has changed.

Mr. HOFFMAN. It has not changed. It has changed, but not to that degree.

Mr. SIMON. So when I see a 12.6-percent increase for special education programs, when you consider inflation, you are basically at a status quo budget on special education. Is that a fair assessment?

Mr. BERMAN. The 12 percent that you are looking at is for fiscal 1979.

Mr. SIMON. I am looking at attachment A of Gene Hoffman's statement. It compares fiscal year 1980 and the recommended figure for 1981.

Mr. HOFFMAN. That 12.6-percent increase is probably a lesser increase than we have seen in several of the past years. I forget whether it was last year or the year before, the increase was even higher.

Mr. SIMON. Yes.

Mr. HOFFMAN. So this year it is probably close to what inflation is or will be, but we have done even more in the last year or two.

Mr. SIMON. I have the advantage or the disadvantage of being on the Budget Committee, in addition to being on the Education Committee, in Washington. One of the arguments my colleagues use against me when I try to get more money for the handicapped is: What difference does it make whether that level of Federal funding is 12 percent, 14 percent, or 20 percent; we are not going to provide any additional services for handicapped youngsters. That gap will be filled by State and local government. This is a place where the Federal Government can save money.

How do you respond to my colleagues?

Mr. HOFFMAN. The response that I would make as a State legislator is: Yes, you are probably right that, as indicated by the numbers here, we are responding. If you put our 12 percent increase against the zero increase which the Budget Committee is recommending for the special education and Public Law 94–142, obviously we are making that up.

We would suggest the difficulty is that this is contrary to what was indicated was going to happen. As we draw off those dollars to meet the requirements that are placed on us by Public Law 94–142, those are dollars that could be spent in more personnel programs, or maybe even in other areas of education. We are involved in replacement dollars, only it has been reversed.

Mr. BERMAN. My response to that point, one of your colleagues—I cannot recall his name—the last time we came to Washington, that was one of the questions that he posed to me: Even if we did more, it is not going to mean anything more. All we are going to do is substitute Federal dollars for what you are supposed to do on the local and State levels.

I disagree with that. I think that in fact what we are seeing—for example, one of the witnesses that will follow, Charlotte Des Jardins with the Coordinating Council for Handicapped Children, will tell you. There is a bill that I have introduced to address the problem of private placements and the problems of therapy and related services.

The bill as amended, as it sits at this moment, handicapped advocates are unhappy with the bill. The Bureau of the Budget is unhappy with the bill. They are coming from opposite ends. For the former it does not do enough, and for the latter it does too much. I will admit that it does not do what I would like it to do. I got 30-plus votes to get it out of the Senate, and I am not sure what is going to happen in the House.

If the Federal money was in line with what the promises were back in 1975–76, I might not have those same problems. The Bureau of the Budget would see that it is not a question of State resources, but there would be Federal resources available, and maybe we could make much more progress toward addressing the mandates that are set out.

We are not saying, going beyond Public Law 94–142. We are saying, just being able to live up to that. That is the difference between the levels that have been delivered and the levels that were promised.

Mr. SIMON. Since we are talking about the funding, let me lobby the two of you here with an illustration that you may be able to use as you try to get funds for your program.

We had testimony a couple of months ago from the State of Arkansas. In their rehabilitation program they found a young man who is not getting an education, or who is not getting the kind of an opportunity that he should. Through the vocational education program and others, he ultimately became a physician.

That physician now has paid enough in taxes so that he has more than paid for vocational rehabilitation for the State of Arkansas for the first 20 years of its existence.

You see, these things don't pay off tomorrow, but ultimately they do.

Yesterday I was on the floor, and a colleague from New Jersey came up to me and said: I think our schools are putting too many people in the handicapped category in order to get Federal funds. Are you finding any of that?

Mr. BERMAN. I have not. What we have done in Illinois is to try to strike a balance. Because the determination is made at the local level, we statutorily tried to strike a formula balance that would allow school districts the leeway and the funding to respond by evaluating children as they should be, but not giving the school districts any windfall by putting more children in that category than there should be.

My impression is that it has worked pretty well under the formula that we have had. We always find parents that think that their children have either been overevaluated, or underevaluated, but I think outside of occasional disputes which we take care of through our hearing process, which I think is one of the most important parts of Public Law 94–142, the parental involvement to bring administrators to task through a hearing process. I think it is working pretty well.

Mr. SIMON. Gene, you mentioned the improved training of administrative personnel. We have had quite a bit of testimony indicating we needed improved training for teachers, but we have not had any suggestions that we need improved training for administrative personnel.

Mr. HOFFMAN. Yes. I believe the major institutions that train teachers, due to a number of factors, including legislation that we passed a year ago in terms of identifying children with special needs, have been improved.

I think the point I want to make, and I will try to emphasize it, is that Public Law 94–142 is a data-based system of goals and objectives which we are applying to individual students on a national basis. This is the first time that we have ever done this. So we are placing the people who are doing the evaluating and the administering, many of them, in a situation in which they have not been before.

If you think back historically to the typical pattern, the traditional pattern of training teachers and training administrators, for the most part the data-based management system is something that has come in, and those who are familiar with it today have learned while they have been on the job in the short 4 years.

The people who are in those positions have been in those positions for a long time and have had their training in a different time and under a different set of circumstances.

I think the question may be a more legitimate question to some of the people whom I see on the list, who are in those administrative positions now.

I think in Illinois—and you were in the legislature at the time that we went to the joint agreement kind of an approach to deal with this—as opposed to what is happening in some other States in terms of having intermediate service regions on a relatively consistent basis to provide these services, we have developed a maybe uneven administrative level of expertise across the State.

Mr. **Simon**. Senator Berman, you mentioned the insurance situation. You have the Aetna insurance that is involved. Is this fairly common now for all carriers?

Mr. **Berman**. We have been in touch with both the State board of education and our department of insurance. I think that most carriers are recognizing—they don't have to change their printed policies—the costs that an insured must bear as a result of Public Law 94–142, and they are relieved of that cost. Therefore, what they would have otherwise previously paid many times, they don't have to pay. The law changed, and they did not have to change their policy.

I don't know. I cannot tell you today if there has been any dramatic decrease in premiums as a result of decrease in benefits, but I think the companies recognized their obligations have been reduced by the passage of Public Law 94–142 and, being good business people, they are taking advantage of that.

I think that this is going to be a serious problem that we will have to take a look at because I am not sure how we are going to be able to offset that situation. Hopefully the regulatory agencies and departments will see to it that any increase in benefits results in decreases in premiums. The problem is, how do you and I and Gene and other governmental people translate that decrease in premiums into additional government funds to make up what the insurance companies are not paying for.

Mr. **Hoffman**. We were sensitive to that problem early on. In fact, in our legislation we included the fact that this legislation did not relieve third party payers from current obligation, and we included in there other governmental agencies. Out of that we were able, under great duress, I might add, on the part of some of us, to get those people to sit down together and deal with the problems of turf. We still have not resolved it all.

This is, I believe, one of the toughest areas that we have to deal with here.

Mr. SIMON. Fundamentally, as I listen to your testimony, you are suggesting that there may be a point of clarification here. The fundamental problem is funding.

Mr. BERMAN. Yes.

Mr. SIMON. Do any of the staff have any questions?

We thank you very, very much for being here. It is great to see both of you again.

Mr. BERMAN. Thank you for the opportunity.

Mr. SIMON. You have been interested in the cause of education for as long as I have known you.

Mr. BERMAN. We are always learning.

Mr. SIMON. We always are.

Mr. HOFFMAN. Thank you, Paul.

Mr. SIMON. Our next witness is Ms. Charlotte Des Jardins, director, Coordinating Council for Handicapped Children.

STATEMENT OF CHARLOTTE DES JARDINS, DIRECTOR, COORDINATING COUNCIL FOR HANDICAPPED CHILDREN

Ms. DES JARDINS. I am really happy to be here. I really want to express my appreciation, Congressman Simon, for responding to my request to have public oversight hearings on Public Law 94–142 in the city of Chicago.

When you had the oversight hearings last year, I wrote you a letter, and I am really happy that there was such a prompt response and that it was such a positive response. I am sure that you had requests from other people and other organizations for the same thing, and I am glad that you are so responsive.

I personally have been an admirer of yours, I must confess, since the middle 1950's, when I first read an article about you in Harpers magazine. It was a muck-raking article on Illinois politics.

Mr. SIMON. Your taste may not be any good, but your memory is excellent. [Laughter.]

Ms. DES JARDINS. So I have been following your career ever since. I am really delighted that you have been recently appointed to this position.

I am the director of the Coordinating Council for Handicapped Children. This is a coalition of more than 100 parents and professional organizations, principally in the Chicago metropolitan area. However, we do have a number of organizations in other parts of the State that belong, and also organizations in other parts of the country. In addition to the 100 organizations, we also have over 500 individuals and families who pay dues to the coordinating council.

We are basically a parent-run coalition. We have a staff of about five people right now, everybody part time except for me, and everybody a parent of a handicapped child except for me. So I can tell you that parent involvement is a necessity to make Public Law 94–142 work. When I heard the remarks of Representative Hoffman, I was really a little bit disappointed that he seemed to feel that that was a negative part of Public Law 94–142, or at least that is how I interpreted his comment.

Really, this is a golden opportunity for professionals and for educators to get together with parents and sit down with them together and map out a plan for the child, together agree on what the program is going to be. This is really the most important part of Public Law 94–142. We get reports like this from parents all the time, and I really hope that you will consider this a very important part of Public Law 94–142.

Today, I am here to tell you basically about some of the problems that have been reported to us from the more than 500 parents and professionals who call us each month. We basically get more than 30 calls every single day from parents and professionals who are undergoing, in a very personal way, problems related to Public Law 94–142. I would like to tell you about that from the reports.

We document each call so that we know; we document each letter so that we know, through a very complicated documentation process, what the problems are. Most of my remarks will be about the critical situation in Chicago, although a third of our calls do come from the suburbs.

Mr. **Simon**. Do you have a prepared statement?

Ms. **Des Jardins**. Yes, I do have a statement. I have a whole bunch of copies. I was working on it until 11 o'clock last night, and that is why I am late in giving them to you.

Mr. **Simon**. Thank you. Your statement will be made part of the record.

Ms. **Des Jardins**. I am sure you will hear today, as I see Interim General Superintendent Angeline Caruso is on the agenda, and she will tell you about the critical situation in Chicago. I would like to elaborate on that situation so that you also get the perspective of our organizations and the parents who call us.

I am sure you will hear that Chicago—in spite of the fact that we are in such terrible shape and have had to make cutbacks of $60 million around February 1, and they are right now working on the next $100 million which has to be cut by next September—you will hear about the terrible situation we are in.

You may also hear that Chicago is making progress in spite of that. For that, I would like to call your attention to the last page of the statement, which is reproduced from the 1971 Chicago Board of Education tentative budget. We get the school board budget every single year in order to testify at public hearings that the Chicago Board of Education has on the budget, and we keep a file. We have been doing this since we were first organized in 1969.

In the 1971 budget, please note that the Chicago Board of Education at that time made a commitment to serve 59,803 children. This was way back 9 years ago. Today, according to this application to the Federal Government for Public Law 94–142 funds, the Chicago Board of Education is serving only 54,000.

Mr. **Simon**. How do the total enrollments compare for those 2 years?

Ms. **Des Jardins**. You are talking about the school enrollment?

Mr. **Simon**. Yes.

Ms. Des Jardins. I would say that it has declined only slightly. Basically, here in Chicago we have an enrollment of approximately 1 million children. When you count 477,000 in the Chicago public schools, an additional 225,000 in parochial schools, and an additional 250,000 or so in various kinds of private schools, we have a total enrollment of at least 1 million.

Mr. Simons. The 54,000 includes those that are in private schools also?

Ms. Des Jardins. Exactly. It includes the approximately 3,200 children that are funded at public expense in private schools, that are Chicago school students.

I would say, when you consider that we are today serving 5,000 less than Chicago promised to serve in 1971, I don't consider that to be progress. I would like to point out that in spite of the financial crisis that the Chicago Board of Education faces, they are mismanaging funds. They have been doing so far many, many years.

So when we hear pleas from Chicago that we don't have any money, therefore we should be absolved from doing more for the handicapped on that basis, I think we have to remember how much money the Chicago Board of Education has wasted. This is documented in the text of my statement.

When we see that for custodial work the janitors make between $11,000 and $33,000 a year; when we see that electricians receive $26,800 a year, while their counterparts in private industry are paid only $20,000 a year; when we see carpenters making $25,600 a year, while their counterparts make only $19,800; and sheet-metal-workers make $21,000 a year, while their counterparts in private industry make only $19,000; when we look at those figures, and they are all in the current school board budget, we know how much waste there is in the Chicago school system.

We also need to point to the waste that we have in the 1930–50 prices that the board of education has on its own property which it rents out. For instance, the land that the Midway Airport is on, the land that Carson-Perry-Scott is on, the Inland Steel Building, a number of very lucrative properties in Chicago are owned by the Chicago Board of Education, and yet because they have locked themselves up in 100-year leases, 50- and 20-year leases, one which was negotiated when the vice president of Carson-Perry-Scott was sitting on the board of education for his own lease, a 20-year lease, you can imagine how much mismanagement goes on.

There is also mismanagement because of uncollected personal capital property tax——

Mr. Simon. I don't mean to cut you off, but we will enter your statement in the record.

Ms. Des Jardins. Here is the problem that we have identified through calls that we get. We have identified the most serious problem to be inappropriate placement and inadequate placement. This involves especially children who are learning disabled or emotionally disturbed, and who are often misdiagnosed and misplaced, or denied the services they need, especially when they need private services.

We have found that financial considerations, contrary to Public Law 94–142, often determine the placement of a child, particularly if that child needs a private day or residential placement.

Parents of emotionally disturbed children are especially vulnerable. The fate of these children is decided by a State board called, the Governor's Purchased Care Review Board. I was pleased that you have already identified that as a problem. This is a board composed of representatives of eight State agencies.

From the reports that we receive from both parents and the professionals who are helping them identify residential placement, we know that the decisions of the Governor's Purchased Care Review Board are governed by the Governor's stated priority to increase Illinois' inflated surplus rather than the educational needs of the children involved.

Here it is important to point out that the State is not in a financial crunch. There is no excuse for denying services to emotionally disturbed children strictly because we want to put money in the bank. As a taxpayer, I resent that.

Mr. SIMON. Can you give me a specific instance of someone who is not receiving the kind of opportunity that ought to be there?

Ms. DES JARDINS. You have been requested to give time to some of the parents who are having those problems. I have personally told them about the hearings.

Here is the kind of thing that happens, and we hear this kind of thing every day. A parent calls us and tells us that their child tried to commit suicide a couple of months ago and tried again a month ago and tried again a week ago. Therefore, the only thing that they can do is to try to find a residential placement for that child to really save that child's life. It is a matter of life and death.

They go through the process. They have to apply to the local school district. That takes quite a while, depending on the school district—sometimes only a few weeks, but sometimes several months, and sometimes over 1 year.

When you consider that it is a residential placement and this is an emotionally disturbed child, now another agency has to come in. This is the department of mental health; they have to approve the placement and grant what is called an individual care grant.

When the parents call the department of mental health and they are shunted through a subregion and all this stuff, they are told two things. No. 1: Your child is really not severe enough. Parents whose children have attempted suicide are told this: Your child is really not psychotic. The problem is not serious enough.

No. 2: We do not have money in this line item in the department of mental health. This is another problem, you see, when another agency comes in, because the department of mental health has refused to recognize its responsibilities toward emotionally disturbed children.

In the current department of mental health budget, the line item for residential services for emotionally disturbed children is only $1.4 million compared to $16.3 million for the developmentally disabled. That shows you the DD lobby is a lot stronger than the MI lobby.

You might think that there is a logical reason for that. There are more developmentally disabled children than emotionally disturbed. This is not the case. The department of mental health's 5-year plan actually identified that there is twice the number of emotionally disturbed children who need private residential services as DD.

Mr. **Simon**. What is the average waiting period for an emotionally disturbed child who is reported to the school authorities, between the time of that notification, either by a parent or a teacher, and a decision by the school?

Ms. **Des Jardins**. It is seldom that the wait is less than 3 months It is often 6 months, and as I said, sometimes even over 1 year, even when it is a critical situation, even when a child is in a hospital like Forest Hospital or River Edge Hospital or Ridgeway Hospital, and is there for treatment, and they are about to discharge him.

The hospital calls and tells the parents, "You have to come and get your child. We have not been able to identify a placement," or "The department of mental health is not willing to pay the placement that we have identified"—this is another problem—"you have to come and get him because your insurance has expired."

This is what happens. Parents often have to pay out-of-pocket expenses of $10,000 and sometimes $20,000. They really go broke. They go bankrupt trying to do something for their kids. This is a very, very critical problem that we have identified.

We have a parent here today who would like to speak to you on that issue very personally. Her name is Pat Emmerich, and she is sitting in the back of the room.

Mr. **Simon**. We have her name and the name of one other person.

Ms. **Des Jardins**. I understand that she has to leave at 12.

Mr. **Simon**. We will try to work her in later this morning, depending on how things move along.

Ms. **Des Jardins**. I would like Pat to come and share this time with me, if that is possible, because this is a very critical problem.

I will tell you very briefly the rest of what I was going to tell you.

Another problem that we have identified on top of that is problems in terms of related services. What happens in terms of that is a child needs a service, physical therapy, speech therapy, and the school district refuse to write it into the IEP. This happens very often with summer program also; the school district refuses to write it into the IEP.

I must congratulate the Chicago Board of Education for that, and I want to thank Mr. Gabriel here, because they have approved a summer program for children in spite of the financial crunch; but in some of the suburbs, the school district refuses to allow a summer program.

That is a problem. We know that children regress. You pointed that out yourself when you gave the wonderful example of the young man who became a doctor because he did get services.

Another problem is the problem of surrogate parents. I have been told that there have been only three requests for surrogate parents in the entire State of Illinois. Knowing of the thousands of children in State institutions, I do not believe that, because a large number of those children no longer have contact with their parents. They need a surrogate parent who will make sure that they are getting services.

In many of our State institutions there are very, very few children who receive educational services even though that is required by law. I must really point that out to you.

Another problem is with the IEP. Our documentation shows that parents are not told of their rights. I was, to tell you the truth, very disappointed in Representative Hoffman when he said that this is a problem, that parents should be told of their rights, and that parents should be involved. This is a problem with the professionals.

As far as I am concerned, if you are a professional and you are getting paid a professional's salary and you have gone to school to get a professional degree, you should be able to relate to people and you should be able to relate to parents. This should not be considered a problem. It is a positive thing. Parents can work with professionals, and vice versa.

Very often the parent goes to the IEP meeting. The IEP is all made out. These are the reports that we get. The parents are told: We have 5 minutes. Here are all the things that we are going to do for your child. We have a parent waiting outside. Here is where you sign. This is more the norm than the other way, where the parent and the professional decide what should be in the IEP.

Another alarming thing that I have found out, and I have personally experienced this, is that more and more IEP meetings are stacked. By that I mean, the parent walks into the room and sees a whole tableful of people over here.

I myself was present at an IEP meeting where there were 10 people. Of course, this so angered the parent that she asked for another IEP meeting. At the next meeting she brought 10 people. This is a ridiculous situation that this is what we have to do.

Also, at one of the meetings that one of our staff persons attended, there were actually 25 people. What are we doing, using Public Law 94–142 funds to pay for that kind of thing? I heard Senator Berman pleading poverty today on the part of the school districts. We have to remember that some of that money is being used to do things like that. This is not right. This is misuse of public funds, in my opinion.

Mr. SIMON. Will increased Federal funding help the situation, or not?

Ms. DES JARDINS. Of course it will help.

Mr. SIMON. What you are saying is that the problems are primarily not due to a lack of Federal funding.

Ms. DES JARDINS. No. I am saying that they are due to a lack of Federal funding. I would certainly take that position: they are definitely due to the lack of Federal funding. However, there are other problems; in other words, misuse of the Federal funds where they are available.

Another misuse of Federal funds is the use of Public Law 94–142 funds to pay lawyers to fight a parent who is not getting the services that they are requesting, to fight them both at the IEP meeting and at the due process level. More and more we are finding that parents are going to a due process hearing and there is a lawyer for the school district there on the other side of the table. That is a misuse of funds, in my opinion. That is not what Public Law 94–142 funds are supposed to be used for.

Mr. SIMON. I don't mean to be pushing, but if you could summarize very briefly, because we have many other witnesses to from this morning.

Ms. DES JARDINS. OK.

Monitoring is a problem because it is self-monitoring. This is really akin to giving police duty to the mafia, and it works just about as well, as you can imagine. What we recommend is parent monitoring because they have the self-interest and the interest of their children to make them quality monitors.

I would like to see some rules and regulations to that effect. You could have a very simple questionnaire given out to parents at the application level for them to fill out as to whether or not they got the services that their children need. Granted, it would be a parent's opinion, but you certainly would have a much better idea of how Public Law 94–142 is working if you had an evaluation done by the parents of what is really going on.

That about summarizes the remarks that I have. I really want to thank you. I want to impress upon you that it is important to remember, as you pointed out, Congressman Simon, to spend money today for what we are going to reap tomorrow. Today, we are spending more than $175 per day per child at Chicago Reed because yesterday we were not willing to provide that child with an educational program that would have cost just a few dollars a day. We are spending $50 at Dixon per day per child in a warehousing situation because we were not willing to spend a few dollars a few years ago.

So it is important, as you pointed out, to be willing to make a financial commitment today. This is cost effective to do this. Of course, even more important than all this is what the kids need, and we have to remember that.

Thank you very much.

[The prepared statement of Charlotte Des Jardins follows:]

PREPARED STATEMENT OF CHARLOTTE DES JARDINS, DIRECTOR, COORDINATING COUNCIL FOR HANDICAPPED CHILDREN

My name is Charlotte Des Jardins, and I am the Director of the Coordinating Council for Handicapped Children, a coalition of more than 100 parent and professional organizations working together to improve services for all handicapped children.

You will hear today from Chicago's Interim General Superintendent of Schools, Angeline Caruso. She will, no doubt, tell you about Chicago's financial crisis—about the $60 million in cuts the board has already made; about the $101 million in cuts the board still has to make, by next September, to meet its state mandate. You will hear her tell you what she has told us—that ". . . mandated programs in particular must be re-examined in light of the level of support received from the agencies that require supplemental educational services."

You will, no doubt, be told of the progress Chicago has made during the last 11 years since Illinois' own Mandatory Special Education legislation came into effect. But, before you draw any conclusions or make any decisions about Chicago, I suggest that you take a look at the record—Chicago's own record. Take a look at the attached excerpt from the Chicago Board of Education's 1971 Tentative Budget. Take a look at the number of students the board promises to serve—a total of 59,803 students. Now, take a look at the Board's 1979 application for Public Law 94–142 funds. How many students did the board report it was actually serving—a total of only 54,000 children, when it should be serving over 100,000 according to Public Law 94–142 estimates (12 percent of a total school population of approximately 1 million).

In 1979, the Chicago Board of Education was actually serving, by its own report, 5,803—less children than it announced it would serve in its FY 1971 Tentative Budget! Is that what the board calls progress?

As we can see from its own figures, what the Chicago Board of Education promises and what the Chicago Board of Education delivers are two very different things.

While the Board of Education pleads a financial crunch that prevents it from doing more for the handicapped, we find that it continues to waste precious millions through: mismanagement, overpayment of its non-service personnel, top-heavy, money heavy bureaucracy, its timid response to uncollected corporate personal property taxes, (the bulk of which is used to finance Board of Education expenses) and through the 1930 prices it still collects on its own property.

It is a documented fact that the Chicago Board of Education has twice as many custodial service workers as it needs (as many as New York City Schools). For example, although Chicago has half of New York's school population, Chicago actually has 4,749 custodial service workers for 647 schools and 477,339 students. This amounts to 6 custodial worker per school, one worker for every 106 students.

These custodial workers receive salaries ranging from $11,856 to $33,318 a year. Other inflated salaries of non-service personnel are those paid to: electricians who receive $26,800 a year, while their counterparts in private industry are only paid $20,200 a year; carpenters, who receive $25,600 a year, while those in private industry make $19,800 a year; sheet metal and roof workers who receive a salary of $21,844 a year, compared to $19,600 in private industry; machinists receive a salary $26,600 while those in private industry make $19,600. A look at the Board of Education's 1975–80 School Budget will also show you salaries such as: electrical engineers at $35,013/yr; coordinators (all departments) at $29–33,000/yr; shade makers at $25,806/yr; plasterers at $24,100/yr; plasterers helpers at $20,777/yr; supervision of staff—$39,334/yr; assistant supervision of staff, $35,816/yr. The budget is full of such salaries. I can't possibly quote them. Each one is concrete testimony to the Board's lopsided commitments to its own employees—particularly its bureaucrats and tradesmen—rather than to the children of Chicago, whom our taxes pay them to educate.

We know that these overblown salaries play a major role in the Board's financial crisis, particularly since many of the above personnel work a traditional six-hour school day. We also know of the millions the Board keeps wasting on obsolete leases on its own property, collecting rents at 1930 and 1940 and 1950 prices, instead of current market value. There is no excuse for this gross misuse of public funds, when Chicago has so many handicapped children who need help.

Our organization receives approximately 500 phone calls every month from parents of handicapped children and their professional helpers—two-thirds are from Chicago, one-third are from suburbs and other areas. We also receive approximately 300 letters per month from parents and professionals about special education problems. Through these phone calls and letters, all of whom are recorded and documented, we have identified learning disabled and mentally ill school age children as the two largest categories of unserved, underserved and inappropriately served children in the Chicago metropolitan area.

We have found the most serious problem to be inappropriate placement and inadequate placement. This involves especially children who are learning disabled or emotionally disturbed who are often misdiagnosed, misplaced or denied the services they need, especially when they need private services. We have found that financial considerations, contrary to Public Law 94–142, often determine the placement of a child—particularly if that child needs a private/day or residential placement.

Parents of emotionally disturbed children are especially vulnerable. The fate of these children is decided by a state board called the Governor's Purchase Care Review Board (a board composed of representatives from 8 state agencies). The reports we have received, both from the parents whose applications for private placement have been referred to the GPCRB and the professionals who are trying to assist them in their quest for services, indicates to us that the decisions of the GPCRB are dictated by the Governor's stated priority to increase Illinois' inflated surplus, rather than the educational needs of the children involved.

Before a case is even allowed to reach the GPCRB, every conceivable obstacle is thrown in the parents' way—to discourage them, to persuade them to give up. Parents have reported to us that they are often told over the phone by the Dept. of Mental Health employees that their child is not eligible, and that it's no use to even apply. The Dept. of Mental Health then reports that they have few people on waiting lists and that it's not necessary to appropriate a larger amount for residential services.

The State of Illinois has concretely indicated its low regard for emotionally disturbed children in the fiscal year 1981 Dept. of Mental Health and Developmental Disabilities Budget. After promises by MH/DD Director Robert Di Vito to our organization two years in a row, of substantial increases in the line item for private residential programs for mentally ill children, we find the appropriation virtually unchanged showing $1.4 million for residential services for mentally ill children and $16.5 million for the developmentally disabled—even though the Department of Mental Health's own five year plan published in 1975, shows that there are twice the number of mentally ill children who need residential services than developmentally disabled.

The Office of Civil Rights findings confirm our report. For the Office of Civil Rights has found Illinois in non-compliance with Public Law 94–142. They have found, as we have, that the GPCRB rates are so low that many private facilities refuse to accept Illinois children; that therapy is not considered an allowable cost, even though an educational program for emotionally disturbed children must include therapy if it is to succeed; that because of the state's unrealistically low funding levels and its refusal to pay for therapy, parents are often forced to pay part of the costs of private schools, contrary to Public Law 94–142.

A report from Donald Blodgett, State Plan Officer, Field Services Branch, Bureau of Education for the Handicapped, also substantiates these findings.

Other areas of non-compliance we have discovered are:

1. *Related services.*—their provision is often based, not on the needs of the children, but on the school district's willingness (or nonwillingness) to pay for them.

2. *Surrogate parents.*—Although handicapped children who need surrogate parents (our state institutions alone house many thousands who no longer have contact with their parents), the State of Illinois at present has less than a handful of trained surrogate parents. The SEA's response to my inquiry on this matter was simply that they had had only three requests for surrogate parents. I believe that it is Public Law 94–142's intent, and the responsibility of the LEA's and SEA's to seek out children who need surrogate parents, and to inform public and private agencies that surrogate parents are available for handicapped children who need them. They have not done so. (I must report, however, that a representative of the SEA announced at a state conference last fall that the State had 85 trained surrogate parents. Upon my questioning, he confessed that they were the state's own Due Process Hearing officers).

3. *IEP.*—our documentation shows that in the majority of cases, the IEP is already made out, when parents and school staff meet, contrary to Public Law 94–142, and that parents are requested to sign the IEP even when they do not agree. We are also alarmed at the growing number of IEP conferences which are being staffed by as many as ten or fifteen school representatives. I personally attended one of these meetings and another CCHC staff member attended a staffing, attended by 25 professionals from the school district and other related agencies. I cannot think of a single reason for this preponderance of professionals (whose time is paid by public funds), except to intimidate parents.

4. *Due process.*—parents are reporting in increasing numbers their dissatisfaction with Due Process hearings. It's small wonder when Due Process hearing officers are by and large the very school officials whose policies and practices they oppose (even though they are from another district). In Illinois, for example, only two of its 85 Due Process Hearing Officers are parents. It's no wonder so many cases are decided against parents. We are also alarmed at the increasing number of school districts who use their Public Law 94–142 funds to pay lawyers to represent the school district at Due Process Hearings (sometimes even at staffings and IEP meetings), or to find "legal" ways to circumvent Public Law 94–142. We consider this a gross misuse of public funds.

5. *Lack of vocational education programs* to meet the needs of special education students, especially learning disabled students.

6. *Monitoring.*—The monitoring we have in Illinois is mainly self monitoring—something like assigning police duties to the mafia—and just as effective. We recommend parent monitoring. Their self interest and the interest of their children will guarantee quality monitoring.

In closing, it should be obvious that Chicago, and the entire State of Illinois, have a long way to go to be in full compliance with Public Law 94–142.

[From the 1971 Chicago Board of Education Tentative Budget]

SPECIAL EDUCATION

The Chicago public schools provide special instructional and other services for students who are physically or mentally handicapped, who are socially maladjusted or emotionally disturbed, or who have learning disabilities. During the last five years the program has been expanded as the Board of Education has extended the types of programs provided and the age range of the students accommodated. Emphasis continues to be placed on early identification and placement in classes which will provide the special assistance the child requires to achieve his maximum potential.

Indicated below are the number of special education students for whom provision is made in the 1971 tentative budget together with similar data for 1965.

	1965 students	1971 students [1]
Educable mentally handicapped	7, 807	16, 762
Trainable mentally handicapped	323	1, 944
Socially maladjusted	2, 622	[2] 5, 844
Learning disability	600	2, 761
Brain injured	24	594
Emotionally disturbed		[2] 1, 535
Physically handicapped	1, 023	1, 143
Homebound and hospital	607	679
Visually handicapped	692	1, 715
Hearing handicapped	726	1, 646
Multiply handicapped	754	[2] 1, 180
Speech handicapped	10, 992	21, 800
Tuition students		2, 000
Total	26, 170	59, 803

[1] These are estimated figures based on enrollments in classes now in existence, classes which will be opened between the middle of October 1970 and December 1970, and classes to be opened during 1971.

[2] Includes children in ERA.

Mr. SIMON. Thank you very much for your testimony and for appearing here today.

Our next panel will be composed of Angeline P. Caruso, the interim general superintendent of schools; Stanley Bristol, the director of special education, north suburban special education district; and Joseph Fisher, the assistant superintendent.

Mr. Lehne, I gather that you are speaking here for Dr. Caruso?

Mr. LEHNE. With the permission of the Chair, I would like to do that.

Mr. SIMON. OK.

Mr. LEHNE. Stanley just said that I don't look like Dr. Caruso, nor will the material Dr. Caruso prepared sound quite like Charlotte had anticipated, but I would like the opportunity to present it.

Mr. SIMON. Fine. Why don't we start with you, and you can read the statement or summarize it, however you prefer.

Mr. LEHNE. I would like to summarize it, if I may. I think the contribution has already been put into the record. Senator Berman, Representative Hoffman, and others have touched on some of the things that we would like to share with you.

STATEMENT OF ANGELINE P. CARUSO, INTERIM GENERAL SUPERINTENDENT OF SCHOOLS, PRESENTED BY ARTHUR LEHNE, ASSISTANT GENERAL SUPERINTENDENT OF SCHOOLS, CHICAGO, BOARD OF EDUCATION

Mr. LEHNE. We would like to welcome you again on behalf of the schools of Chicago and the citizens and the board of education. We are confident, too, that this testimony is going to be extremely helpful.

Mr. SIMON. You should identify yourself and give your title for the record.

Mr. Lehne. I am Arthur Lehne. I am assistant superintendent of schools in Chicago in the area of Federal and State relations.

The Chicago school system, Mr. Simon, in terms of review, is the third largest school system in the Nation. We have a student population today of 469,000. Some 10 to 12 years ago, we were approximately 580,000, so in response to your earlier question, our enrollment has gone down by over 100,000 in recent years.

We have 600 facilities, with a staff of 48,000 employees, of which 27,000 are certified people. We have not lost substantially in terms of our teaching staff over the past decade because even though our enrollment has gone down, we have added programs, primarily in the area of title I services which have increased, and also in the area of special education. We have increased in that area in terms of services in spite of the reduction in enrollment.

We have a very deep commitment to carrying out the mandate. One of our problems is that the main source of revenue in Chicago is property taxes, State aid, and some Federal assistance. We have an annual budget of $1.3 billion. In the district's fiscal year 1980, Federal handicapped moneys totalled approximately $8 million for Public Law 94–142 only. At fair funding levels, which would be 40 percent of the formula, this figure would be approximately $30 million. That is a very significant factor in terms of our ability to deliver services.

We have had a very long commitment to special education in Chicago. Back in 1896, we opened up one of our first special schools. Then again in 1899, we pioneered the first department of child study in the Nation, and I think established a very significant pattern there for youngsters with special needs.

State and Federal mandates which require the identification, diagnosis, training and education, 3-year reevaluation of handicapped students between the ages of 3 and 21 were fulfilled last year in providing special programs to over 50,000 students.

The mandate was fulfilled last year, Mr. Simon, at an excess cost, which is a cost computed on the basis of allowable expenditures less offsetting revenues, Federal, State and local, of $49 million additional dollars, impinging on a very severely constrained budget which Charlotte shared with you.

As educator, we applaud the passage of Public Law 94–142, but the problem of implementation gives us great concerns. Let me discuss some of those.

We are committed to appropriate programs. We are committed to parent participation. In fact, parent participation is imperative in the success of such programs. We encourage parents to assume an active partnership with the education community.

We establish programs to meet the unique needs of the child. When appropriate, we coordinate our activities with various agencies in providing for the child.

Let me share what some of our very deep commitments are, and some of our concerns.

We deplore the failure of congressional funding to match the authorized level. This is a critical factor with us. Last year our system received about $160 per child to pay that excess cost, which I referred to earlier, of almost $50 million. The excess cost is to a large extent centering around identifying and evaluating, educating, and transporting that child. The sums for that come to approximately $16 a month.

Mr. Simon, and members of your committee who will be reviewing the testimony, we would like to call to your attention that with current costs and the inflation factor, the 30- and 40-percent authorizations are far less than that which is needed and that which is practical.

We have indicated a desire to serve children in the best possible manner, but there are problems there. These are not problems with the statute, but problems which we think can be clarified by looking at the mandates.

There is legislation which permits other agencies to provide related services to the same population on a more selective basis. This creates some difficulties for us. Enforced interagency coordination is imperative for compliance with Public Law 94–142 for no cost to parents.

Residential placement, which is the provision of therapy or counseling to students with severe emotional problems and other related services at no cost to the parents, continues to hamper the delivery of services, due to a parent interpretation of regulations by other agencies. This is something that will have to be alleviated. Last year, we estimated that our cost ranged from $3,520 to $41,000 per child when residential charges were involved.

We have with us today, incidentally, Mr. Marty Gabriel, who is the director of special education for the board, and also Barbara Williams, who works with us in our due process area, should there be additional questions on these particular concerns.

A third concern has to do with the IEP process. Last year, to meet the unique needs of the child, almost 27,000 of our students were brought into the general school organization. Although educationally sound and by far more beneficial, the child in this arrangement becomes, then, a supplemental cost to the regular education program.

The components of the IEP are the same for the child with a learning disability who needs speech and language services of 30 minutes a day, as the homebound child or the profoundly retarded child.

Excess paperwork and the number of persons, as well as the need for additional meetings, are placing what we consider to be undue hardship on staff. Provisions of substitutes, for example, for classes is an excessive financial burden.

Instructional activities for all children is being disrupted in meeting the requirements of classroom teachers to attend these meetings.

We recommend a reconsideration process for those children who are likely to be brought into the general school organization, reducing staff in attendance.

We further recommend that the completion of the IEP process not require the writing of short term objectives before placement of the child, or provisions of education. I submit that writing the short term objectives within 30 days after placement in a special education program will permit the objectives to be more specific to the child, and certainly more useful to the special education provider. It would also considerably reduce time spent in meetings.

We, too, want to reduce those costs and that overhead factor. We want to reiterate, however, that we do feel very strongly that Public

Law 94–142 is a good law and that it can work much more effectively on behalf of the children through modifications in the requirement of services that we provide.

On behalf of the school district, we urge this committee and its members to continue the advocacy of aid to the handicapped through Federal assistance. We pledge Chicago's continued support regarding this important issue. Your assignment is an important one, I am glad that you have taken it on. I know that the inquiries on where you are going will be very, very beneficial to us.

In closing, I would like to make a comment about a draft material that has gone to Secretary Hufstedler that schools should provide handicapped students with complete medical and mental health services, including psychotherapy and medical psychiatric counseling. This draft originated in the Bureau of Education of the Handicapped. These are of concern because of the great cost factors which I think are unduly falling on the public schools.

Thank you very much.

[The prepared statement of Angeline P. Caruso follows:]

PREPARED STATEMENT OF ANGELINE P. CARUSO, INTERIM GENERAL SUPERINTENDENT OF SCHOOLS, BOARD OF EDUCATION, CITY OF CHICAGO

Congressman Simon and members of the House Select Committee on the Handicapped, I am Dr. Angeline P. Caruso, interim general superintendent of schools, Board of Education of the city of Chicago. On behalf of Chicago, its children, its schools and its citizens, welcome.

I know that the testimony presented today will develop issues that will address the general concerns—an agenda to approach common needs resulting from Public Law 94–142, the Education for All Handicapped Children Act.

I am pleased with the opportunity you afford our school district to appear before you to state the effects of the implementation of this civil rights legislation on a large urban school district such as Chicago.

This school system is the third largest in the Nation. Student population is 469,000, with 600 facilities and a staff of 48,000 including 27,700 certified teachers. The main sources of revenue are: Local property taxes, State aid and some Federal assistance. Our annual school budget is approximately $1.3 billion. The district's fiscal year 1980 Federal handicapped moneys total approximately $8 million. At fair funding (40 percent formula) the figure would be approximately $30 million.

Since the invitation to your committee to come to Chicago had been accepted earlier this year, we have been anxious to appear before you regarding the mandated Federal act, Public Law 94–142.

The Chicago public school system has had a commitment to the education of handicapped children since it opened its first day school for the deaf and institution classes for the maladjusted in 1896. In 1899, the Chicago schools pioneered the first department of child study in the Nation. Today, the development of programs for the handicapped continues to be a priority in Chicago, limited by a lack of adequate funding and rapid escalation of costs of operating such programs, and certain personnel shortages. Nevertheless, State and Federal mandates requiring the identification, diagnosis, training, education and 3-year reevaluations of handicapped students between the ages of 3 and 21 were fulfilled last year in providing special education programs to over 50,000 students. The mandate was fulfilled last year at an excess cost—a cost computed on the basis of allowable expenditures less offsetting revenue (Federal, State and local)—to be a $49 million additional burden to the taxpayers of Chicago and the local school system.

As educators, we applauded the passage of Public Law 94–142. The problems of implementation are causing us grave concerns. Let me stress that we are committed to appropriate programs, parent participation and increased services for all of our handicapped—and our nonhandicapped. We encourage parents to assume an active partnership with the educational community. We establish programs to meet the "unique needs of the child," and when possible, we coordinate our activities with various agencies in providing for the child.

I want to briefly delineate our major concerns—particularly as a large, urban school system already experiencing serious financial problems.

1. We support the commitment of Congress to a free, appropriate public education for all handicapped children. The first year's authorization and appropriation levels reflected this commitment. We now deplore the failure of congressional funding to match the authorization level. Last year, our system received less than $200 per handicapped child to pay the excess cost computed in identifying, evaluating, staffing, educating, and transporting that child—less than $20 a month during a regular school year.

We submit to you, Mr. Simon, and to the members of your committee, that failure to match the appropriation with the authorization level, will make the delivery of adequate and appropriate services to many handicapped children impossible. We would further call to your attention that, with current costs and the inflation factor, the 30 percent and 40 percent authorizations are less than practical. Last year our excess cost was $49 million. We anticipate it will far exceed that by this year's end.

2. We have indicated our desire to serve our children in the best possible manner. There are problems—perhaps not with the statute—but problems that can be clarified or through additional statutes, corrected. Public Law 94-142 mandates free education and related services for handicapped students. There appears to be other legislation which permits other agencies such as the Departments of Mental Health, Vocation and Rehabilitation, Children and Family Services to provide related services to the same population on a more selective basis, thus denying services to all handicapped by these agencies. Enforced interagency coordination and compliance to the Public Law 94-142 mandate on "no cost to parents" is imperative. Residential placement, the provision of therapy or counseling to students with severe emotional problems, and other related services at no cost to parents, continues to hamper the delivery of services due to apparent interpretations of regulations by other agencies. Although regulations indicate school districts are not necessarily expected to assume all costs, jurisdictional uncertainties exist. Last year's costs ranged from $3,520 to $41,000 per child when residential charges were involved. School districts should be responsible only for costs pertaining to education. These ranged from $2,500 to $12,964 per child. We recommend that other agencies assume the costs of residential placement and treatment within the "no cost" provision. Further clarification of what is an educationally related service is paramount. Recently, an insurance company declined to pay for services previously provided an emotionally handicapped student, claiming it as a school responsibility under Public Law 94-142.

3. A third concern has to do with the IEP process. Last year, to meet the "unique needs of the child," almost 27,000 of our students were brought into the general school organization. Although educationally sound and by far more beneficial to the child, this arrangement is more costly in that all services are supplementary to the regular education program and the identification and evaluation. In fact, the total IEP process is the same. The components of the IEP are the same for the child with learning disabilities who needs speech and language service 30 minutes daily, a hospitalized or homebound child, or a profoundly retarded child. In some States, as Illinois, there are even additional requirements. Instructional activity to all children is being disrupted to permit staff to attend the IEP meetings. Sometimes parents must attend two meetings to complete the process. The excessive paperwork and the numbers of persons, as well as the need for additional meetings, are placing undue hardships on staff. The provision of substitutes to cover classes is an excessive financial burden. Instruction activity to all children is being disrupted in meeting the requirements that the classroom teachers attend these meetings.

We recommend reconsideration of the process for those children who are likely to be brought into the general school organization, reducing staff in attendance. We further recommend that the completion of the IEP process not require the writing of short-term objectives before placement of the child, or provision of special education. We submit that writing the short-term objectives within 30 days after placement in a special education program will permit the objectives to be more specific to the child and certainly more useful to the special education provider. It would also considerably reduce time spent in meetings. We want to reiterate the fact that we do feel strongly that Public

Law 94-142 is a good law, that it could work on behalf of children. To reduce the funding is a grave disservice to the children and to the educational community at large. To give less than full support to a federally mandated program is to erode this service to the children not only of Chicago, Ill., but of our Nation. This legislation being the landmark bill that it is can and should be a beacon that is going to be a pathway to meeting all the immediate needs in the area of special education and would eventually lead to a reduction of the student population in special education programs. To provide full support and funding to our school-age handicapped population is an investment in our Nation's future that we can ill afford not to observe.

On behalf of the School District of Chicago, we respectfully urge this committee and its members, to continue advocacy of aid to the handicapped and Federal assistance. We pledge Chicago's continued support regarding this critical issue. Your assignment is an important one to elementary and secondary education. As you move on with your inquiry I know that you will make recommendations to Congress and the administration that will address the issues that we have raised today. Rest assured that we will continue to assist you in any way that we can. Thank you for coming to Chicago for these important hearings and enjoy your stay.

Mr. SIMON. Thank you very much.

Mr. Stanley Bristol, director of special education, North Suburban Special Education District.

STATEMENT OF STANLEY BRISTOL, DIRECTOR OF SPECIAL EDUCATION, NORTH SUBURBAN SPECIAL EDUCATION DISTRICT

Mr. BRISTOL. Thank you. I appreciate this opportunity to be here today to represent some of our local school districts. I must say that it is a privilege to see you face to face. I have only seen you on television up until now, and you are even better looking face to face.

Mr. SIMON. You are nearsighted, and you did not even know it. [Laughter.]

Mr. BRISTOL. I also want to object to the fact that the term, interim superintendent, was not also put in front of my name because I don't know any superintendents who are not interim. Dr. Caruso is not unique in that respect.

I also want to get the record straight. In our organization, our attorneys are paid for by local funds. We never use any Federal money. I am sure you will be glad to hear that. Of course, the attorney sitting on the other side of the fence with the parents is usually paid for by Federal money, but that is OK.

In case I get bogged down, and not get through my testimony, I would like to bring to the surface a few things which have already come up in the testimony which I would like to highlight.

You raised the question of payoff in special education, and several good examples were given. I would like to suggest that area of payoff which has been somewhat neglected today has to do with the behaviorally disordered child. Most of the children that we see at the adolescent age who require these residential placements which take so much time and are so difficult to accomplish are for children who, if they are given the proper treatment during their high school years and get their lives together, will be taxpayers and competent people in our society.

I think we are neglecting the BD population to a great extent. This is to the detriment of our Nation, and is something that needs to be dealt with very rapidly.

The school district I represent enrolled 42,000 students. We have about 5,000 students who are handicapped. I was going to ask Bernice Bloom, who is the executive director of Ed Red, to join me this morning, and she could not. But we have worked on this testimony together.

Ed Red is a legislative organization representing 100 suburban school districts, including my school district. So if we took the population of those school districts and their handicapped children, we have a unit about the size of the city of Chicago, which means I am trying to represent the views of a very large population of school districts.

When Public Law 94-142 was launched, these school districts were in substantial compliance with Illinois law. That means that we only lacked services to parochial and private schools, and services in the private school placement area where the cost of the placement was only partially covered by the public schools.

In spite of this, you would have expected, then, that our cost increases would essentially be those represented by inflation, but this has not been the case. For example, the budget of my joint agreement increased over 30 percent this current year, and we anticipate an increase of over 25 percent for next year.

We can explain some of this on the basis of inflation, obviously, but how can you be in full compliance, and have these gigantic budget increases. In fact, it was last night that I sat before my budget committee justifying this budget increase. I see I put it down too low. It is actually 28 percent.

It surprises me, however, to find layman school board members are much more likely to support these kinds of cost increases for handicapped children than one would have suspected. But I do believe that we are beginning to reach the end of the tolerance level. There is a recognition on the part of many laymen, and certainly in our society in general, that we have to address an imbalance, but at some point they are going to say, this far and no further.

These increases have not come as a result of funding from the Federal Government, which we were led to believe would significantly reduce the impact of complying with Public Law 94-142. Our 22 school districts spend about $12 million on what would be classified as excess costs of special education, but we receive about 6.5 percent of this through Public Law 94-142. If appropriations reached the highest level of authorization, we would be realizing only 25 percent of our excess costs. Of course, this is a reflection of our high-cost area, and we are talking about average in establishing the 40-percent level in the Federal law.

These increases have occurred despite a rather stable child count and an approximate 5-percent annual decrease in total school enrollment. How can this be? I have three points that I would like to make in reference to this.

One: The concept of appropriate and comprehensive special education services is growing and evolving. For example, where one physical therapist was adequate a few years ago, six are now required. These growing expectations are fueled by the promising rhetoric of Public Law 94-142, the individual education program process, and increased attention to differential diagnosis.

In other words, what was compliance 5 years ago, is not compliance today. The world keeps its perceptions.

Two: Our society seems to be producing children with serious learning and emotional problems out of proportion to changes in the population level. While some of these problems could be attributed to inappropriate school structures, it would be naive to pinpoint this as the primary causal factor.

We see more and more children of preschool age who have severe enough problems to be enrolled in our Early Childhood Center. None of these children have had any contact with schools, public or private. We must conclude that the pressures and tensions of our society today are adversely affecting the emotional lives of our children in the developmental years.

These young emotionally disturbed children will be the ones who at the high school age level, if something is not done, will require these very expensive residential placements.

Three: The advocacy movement rooted in lofty purposes has too often had the effect of generating unrealistic demands on the schools. The focusing on rights tends to obliterate any discussion of practical limits. The linking of the advocacy system with the due process structures has sharpened the angle of takeoff of rising expectations.

Notwithstanding the serious and unintended financial and administrative problems created by Public Law 94–142, the school districts in our area are still committed to the concept of equality of educational opportunity for the handicapped child.

Nothing stated here implies a desire to diminish the level of services or to deprive children of their constitutional rights. But we are facing the increasing threat of backlash from regular teachers, parents of nonhandicapped and gifted children, boards of education, and State legislatures.

The argument underlying the backlash is one of equity and balance. There is a growing perception that the "fair share" principle is being violated. School districts feel they are being forced to cut needed services for all children in order to maintain and extend services for one segment of the school population. Unless this sense of inequity is addressed, gains made in the last few years could be halted and reversed. It will not come by open defiance, but through various types of "foot-dragging."

You naturally know that I am not going to be begging for more funds, so I will pass that part of my testimony.

Even if the funding issue were minor, which it isn't, there would still be some important major problems in implementing Public Law 94–142, and these need to be addressed.

One: A clearer definition of related services is needed. That is the issue of what is specifically required to support a special education program. Of great concern is the question of "therapy." Clear and uniform principles need to be enunciated to sort out the limits of school responsibility of private practitioners and other governmental agencies.

Two: The private school issue is vexing, particularly as it applies to the disturbed child. What is to be done when the schools can maintain a child in a day program, but a damaging home situation is the dominating issue? I spent a good deal of yesterday dealing with an issue exactly like this.

Mr. **Simon**. Can you clarify this? I don't see where the private school complicates that program.

Mr. **Bristol**. It complicates that problem because when you go to residential placements, you obtain them only in a private school. So the private school issue is really the issue of the disturbed because, as has been pointed out before, the developmentally disabled child is well cared for relatively in our special education system, private and public.

Mr. **Simon**. I was misreading you.

Mr. **Bristol**. I am sorry. It is probably the way I wrote it. It was not at 11 o'clock last night, but it was a little late.

The kind of problem we have is this: Everybody agrees that a child had serious problems emotionally in the home and in the community, but the school special education program is able to maintain that child. Because of the way our system works, we are not supposed to be placing children with problems other than educationally related. So we then have to get ourselves involved with other social systems in our States, many of whom are rushing for the high ground along with the insurance companies.

So I had to tell this father very reluctantly yesterday that as a parent I would, of course, agree that he should place his child in a private school. But I suppose we will have to wait until he is a foot taller, and starts knocking his mother down the front stairs, and is in other ways acting up so that he becomes a school problem. Then the schools, being the agency of funding of last resort, will use the legislation that they have at the State level to place the child residentially. Thus, we shift the burden from other agencies who we think were intended to be paying these costs, to the public school. This process is repeated time and time again. Joe Fisher and I have talked about that on many occasions.

The school ends up having to solve social problems which are somewhat remotely educationally related, but are very real problems in this society.

Three: Public Law 94-142 has brought the schools in areas of programming previously dominated by mental health and children's service systems. There are confusing Federal laws and regulations which need to be harmonized. It would then be possible to require each State to create an interconnected system for programming and paying for connected services. As the severity of a child's problem increases, the probability of confused interfacing with various social systems increases.

Four: Increased attention to rights, advocacy, and due process is altering the nature and tone of the parent-school relationship from one characterized as informal, open, and, cooperative, to one decidedly more formal, legalistic and adversarial. It is my judgment that this is not in the best interest of children.

Five: A serious crisis in the supply of special education personnel is evident. In our area, for example, it is virtually impossible to recruit physical and occupational therapists and psychologists. Immediate short-term action is required to encourage the expansion of university training programs.

Much of our new money is spent in trying to chase scarce personnel. For example, next year the beginning psychologist's pay in the Chicago area, by testing the market, is up by about 13.5 percent from the previous year. So we have to put that kind of additional money in just to sustain and get the people we need without talking about expansion of services. This eats up a lot of money.

Let me reiterate that our schools are prepared to attempt to meet their obligations if and when they can be clearly delineated.

A final question needs to be raised: What are the limits, if any, to the responsibility which public schools will be given for ameliorating the social, emotional, physical, and learning problems of our children? The schools are slowly but inexorably becoming the agency of government chiefly responsible for the broad welfare of school-aged children. This is a social policy issue of the first rank which needs to be vigorously addressed.

I will forgo my summary. I think I have said enough, sir.

[The prepared statement of Stanley Bristol follows:]

PREPARED STATEMENT OF STANLEY BRISTOL, DIRECTOR OF SPECIAL EDUCATION, NORTH SUBURBAN SPECIAL EDUCATION DISTRICT

When Public Law 94–142 was launched, the school districts I represent (with enrollments of 42,000) were in substantial compliance with Illinois law and rules and regulations. Subsequent changes to bring these laws and rules into conformity with 94–142 were minor in nature, except in reference to replacements in private schools. Thus, our school districts entered the new era, from a service delivery point of view, in substantial compliance. Notwithstanding, our service system has expanded rapidly over the past three years, and this has been reflected in very large increases in expenditures. For example, our budget increased by over 30 percent this current year and we anticipate that it will increase 25 percent next year. A nearby organization of a similar nature is experiencing a 40 percent increase next year.

These increases have not come as a result of funding from the federal government, which we were led to believe would significantly reduce the impact of complying with 94–142. The 22 member districts of the Northern Suburban Special Education District spend about 12 million dollars on excess costs of special education services and receive about 6½ percent of this through 94–142. If appropriations reached the highest level of authorization, we would be realizing only 25 percent of our excess costs.

In NSSED, these increases have occurred despite a rather stable child count and an approximate 5 percent decrease in total school enrollments. While inflation can account for annual increases in cost of from 10 to 15 percent, the remaining must be explained in other ways:

1. The concepts of appropriate and comprehensive special education services are growing and evolving. For example, where one physical therapist was adequate a few years ago, six are now required. These growing expectations are fueled by the promising rhetoric of 94–142, the individual education program process, and increased attention to differential diagnosis.

2. Our society seems to be producing children with serious learning and emotional problems out of proportion to changes in the population level. While some of these problems could be attributed to inappropriate school structures, it would be naive to pinpoint this as the primary causal factor. We see more and more children of pre-school age who have severe enough problems to be enrolled in our Early Childhood Center. None of these children have had any contact with schools, public or private. We must conclude that the pressures and tensions of our society today are adversely affecting the emotional lives of our children in the developmental years.

3. The advocacy movement, rooted in lofty purposes, has too often had the effect of generating unrealistic demands on the schools. The focusing on rights tends to obliterate any discussion of practical limits. The linking of the advocacy system with the due process structures has sharpened the angle of the take-off of rising expectations.

Notwithstanding the serious and unintended financial and administrative problems created by 94–142, the school districts in our area are still committed to the concept of equality of educational opportunity for the handicapped child. Nothing stated here implies a desire to diminish the level of services or to deprive children of their constitutional rights. But we are facing the increasing threat of backlash from regular teachers, parents of non-handicapped and gifted children, boards of education, and state legislatures. The argument underlying the backlash is one of equity and balance. There is a growing perception that the "fair share" principle is being violated. School districts feel they are being forced to cut needed services for all children in order to maintain and extend services for one segment of the school population. Unless this sense of inequity is addressed, gains made in the last few years could be halted and reversed. It will not come by open defiance, but through various types of "foot-dragging."

The most important single action which the Congress could take is to move funding to the authorized levels. This step would at least underline the continuing commitment of the federal government, and would have heavy symbolic as well as financial impact. The fact that the federal government has not lived up to its commitment provides a rationale to pinch services at the local level.

Even if the funding issue were minor, there would still be some important major problems in implementing 94–142 and these need to be addressed:

1. Clearer definitions of related services are needed, that is, the issue of what is specifically required to support a special education program. Of great concern is the question of "therapy." Clear and uniform principles need to be enunciated to sort out the limits of school responsibility of private practitioners and other governmental agencies.

2. The private school issue is vexing, particularly as it applies to the disturbed child. What is to be done when the schools can maintain a child in a day program, but a damaging home situation is the dominating issue?

3. Public Law 94–142 has brought the schools into areas of programming responsibility previously dominated by mental health and children's service systems. There are confusing federal laws and regulations which need to be harmonized. It would then be possible to require each state to create an interconnected system for programming and paying for connected services. As the severity of a child's problem increases, the probability of confused interfacing with various social systems increases.

4. Increased attention to rights, advocacy, and due process is altering the nature and tone of the parent-school relationship from one characterized as informal, open, and cooperative to one decidedly more formal, legalistic, and adversarial. This trend is not in the best interest of children.

5. A serious crisis in the supply of special education personnel is evident. In our area, for example, it is virtually impossible to recruit physical and occupational therapists, and psychologists. Immediate short-term action is required to encourage the expansion of university training programs.

Let me reiterate that our schools are prepared to attempt to meet their obligations if and when they can be clearly delineated.

A final question needs to be raised; what are the limits, if any, to the responsibility which the public schools will be given for ameliorating the social, emotional, physical and learning problems of our children? The schools are slowly but inexorably becoming the agency of government chiefly responsible for the broad welfare of school aged children. This is a social policy issue of the first rank which needs to be vigorously addressed.

To summarize:

1. Public Law 94–142, as intended, has triggered rapid expansion and improvement of services to the handicapped, but the cost is being borne disproportionately at the local level.

2. The laws and regulations do not adequately address the definition of and responsibility for related services.

3. Special education increasingly brings the schools into areas previously the domain of the private sector or other public agencies. There is inadequate reconciliation of laws and regulations at the federal level to guide this process.

4. Our schools are committed to full services for the handicapped, and dramatic increases in local funding back up this point. But this trend cannot continue in an atmosphere of perceived injustice to the so-called normal or gifted child.

Mr. SIMON. Thank you very much.
Mr. Fisher?

STATEMENT OF JOSEPH FISHER, ASSISTANT SUPERINTENDENT OF SCHOOLS, ILLINOIS STATE BOARD OF EDUCATION

Mr. FISHER. Thank you.

I believe you have copies of the statement that I gave to your staff.

Mr. SIMON. Yes; we have.

Mr. FISHER. I will not read that statement, Representative Simon, but I do want to highlight some of the content of the testimony.

I would like to basically describe to you, to set the tone and mood relative to what has happened in this particular State relative to this law.

We currently serve on a statewide basis about 250,000 children. From the perspective of complaints and concerns, I would also like to offer to you that one-tenth of 1 percent of those 250,000 children have gone to due process procedural hearings during the last 4 years.

To me that is a remarkable type of figure as it relates to the provision of services by public schools. I am not saying that there are not concerns and complaints, but what I am saying basically is that there is some 90 percent of those children who are being served quite effectively and doing quite well.

Again, I would also have to offer that the number of complaints that we receive via telephone and/or letter, either directly from the parents, through your offices, or through Washington, are minuscule in terms of the total numbers of children being served in this State. It is a compliment to the school districts, and the personnel who are attempting to implement this law.

I think, however, that if you look on the first page, paragraph 3, Dr. Cronin, our State superintendent appeared before your committee last fall, and emphasized four major concerns. These four major concerns still hold today. They are, basically:

The insufficient level of coordination of services delivered by other agencies. I think the individuals who testified before me reiterated that point, and part of that must be solved at the State level. We must begin to work out mechanisms whereby the education agency, mental health, and other social service agencies can get their codes in order, and can get their funding sources in order, so that they can complement one another, rather than being the payer of last resort as Mr. Bristol has alluded to earlier.

A second area that is still plaguing Illinois, and will continue as best as we can determine for the next 3 or 4 years, we are not seeing sufficient numbers of trained, certificated personnel being available to our school districts to meet the mandates of this law and to educate children.

A third area, one that I have stated a little bit differently, the Federal Government, be it the education in general, or the Office of Civil Rights, or the legal staffs, have not given the States and on below to school districts the definition or the parameters by which we are to provide services to these children. There are so many gaping holes relative to what constitutes related services, and it is basically one's interpretation of the regulation, or the policy letters that may emanate from Washington.

The fourth one, I will not spend any time on. I think the last page of the testimony reiterates this in terms of giving you the examples of the appropriations versus the authorization to the State of Illinois and what it would do by September of 1981. Instead of receiving $48 million, we would hope to receive $113 million in this State.

If I may quickly jump to paragraph 5 of the first page. There will be presented as a result of a meeting about 2 months ago of 16 select States with policymaking individuals representing the State boards of education who came together in Chicago to discuss the issues as we are discussing today. We have basically put those issues into the four major areas as listed at the bottom of page 1 and the top of page 2.

There is a report being prepared for Secretary Hufstedler by the Chief State School Officers which will reiterate these four points. Again those being the process of approving what is known as State plans by which we get our money from Washington and then flow it through to the local school districts.

There have been horrendous delays in the past. I reiterate the fact that our first State plan took 8 months to get through the bureaucracy in Washington. I can only reiterate that if we do not get it approved by August of this year, we will have $48 million missing from what will go to the local school districts. I cannot tell you where those people are going to get that money to hire those individuals and pay salaries.

We have had the State plan in Washington. It is being reviewed. To date we have received some correspondence in terms of additional information. I would hope that those in Washington could make the decision for all States to get those plans approved, and get the money flowing so that appropriate personnel can be hired and paid for.

Mr. SIMON. If I may interrupt. You submitted the plan when?

Mr. FISHER. The plan went in in April. We met the timeline in terms of the submission of the plan. We have held the various hearings that are required by law. We are now negotiating with the Bureau of Education for the Handicapped on the final few hopes, we hope. But again I would insist that the Federal Government for all States, not just for the State of Illinois, get those plans approved as soon as possible.

The second area that is described here, which is one that is creating some concerns for this State and others as well is the authority and responsibility between the Bureau of Education for the Handicapped and the Office of Civil Rights in terms of who is interpreting the law, who is enforcing the law, and who has the responsibility to lay the mandates on the States in terms of various noncompliance issues.

We have had many meetings with the Federal Government, both the Bureau of Education for the Handicapped, as well as the Office of Civil Rights, in trying to determine what their respective roles and responsibilities are.

A third area, and again I would ask the Government, as we have many times past, to clarify through various policy papers or reports to us exactly what they intend for us to do in some of the issues that are still open to question. The related service issue is one, but one point. The IEP issue that was mentioned before is another issue.

The problem that is presented here is that if we had a policy paper, we could either go along with that policy issue and implement it in the States, or raise those concerns with the Federal Government. Now it is almost raising concerns on a State-by-State basis.

The last one concerns the responsibility of the State education agency to supervise other State governmental agencies who have some responsibility in educating handicapped students.

By the very nature of that statement, or the way it is written, the interpretations given to us are that we are to supervise programs operated by the department of mental health and developmental disabilities and we have to supervise programs operated by the department of rehabilitation services, and many of these are residential programs, yet our own statutes and codes prohibit us from having any authority to do so. It is simply based on the goodwill of the various directors to work out some type of plan.

We have no enforcement activities. We cannot really, in essence, for those agencies to do anything relative to their own particular programs.

I have given you in the middle of page 2 some specific examples. I will not reiterate those. There are other ones that could be given to you.

At the bottom of page 2 there are several individuals around the United States that basically have identified the major problems. We know what they are. I think the solutions rest in three areas.

Certain problems can be reduced by the issuance of policy papers from Washington for clarification. Certain problems must be dealt with by revising the Federal rules and regulations. There are probably one or two that can only be resolved by going into the law itself.

We are proposing, as we have to Dr. Martin of the Bureau of Education for the Handicapped, others that we have described that we would like to work out all of the problems that we possibly can through the first two processes. In other words, clean up those misconceptions, misinformation, or clarify those issues by policy decisions from the Federal Government when possible.

Second, go into the rules and regulations, and modify those with which all of the States can live with. If there is a third issue, we would ask the Congress to open up the law and see if we can make a determination where the change needs to be made, and then get on with the business of educating the handicapped.

Again, I think if we can do this we will reduce the amounts of anxiety, frustration, accusations, and concerns that parents, State education employees, local school districts, and Federal Government officials presently have with the law.

In conclusion, it is a good law. It has done many, many things. I still think, however, that we have these problems that must be dealt with. Thank you.

[The prepared statement of Joseph E. Fisher follows:]

PREPARED STATEMENT OF JOSEPH E. FISHER, ASSISTANT SUPERINTENDENT OF SCHOOLS, ILLINOIS STATE BOARD OF EDUCATION

Representative Simon and members of the Subcommittee on Select Education, Illinois welcomes the oversight committee to Chicago. We appreciate the opportunity to present information regarding Public Law 94-142 on behalf of the Illinois State Board of Education. As you may recall, Dr. Joseph Cronin, State Superintendent of Education, testified before your committee last fall on behalf of the Council of Chief State School Officers while accompanied by

Leonard Hall on behalf of the National Association of State Directors of Special Education. We will not repeat their statements since they are a matter of record; however, a few of those points bear further exploration at this time.

Illinois has had a lengthy and proud history of quality services for handicapped children and youth. Public Law 94–142 structure and funding served to enhance this basic commitment. More students are served, with additional related services being offered, than ever before. Increased parental participation and heightened general community awareness are positive benefits of the Education of All Handicapped Children Act.

Those points raised earlier by Dr. Cronin that are still viable and should be discussed today are: (1) insufficient state level coordination of services delivered by other agencies; (2) inadequate staff availability or shortages of key personnel for both instruction and related services; (3) incompleteness of definitions of "educational services" and "related services"; and (4) costs of underwriting the programs.

As to the first three points, Illinois has joined into discussion with 15 other states under the auspices of a meeting with the Council of Chief State School Officers to discuss these common national concerns and the possible remedies. Among the solutions to consider are those that are administrative, those that are regulatory, and those that are legislative, all of these at both the state and/or national level. This discussion is not intended to present the consensus of opinion of that meeting. That consensus will be presented by the Chief State School Officers organization to Secretary of Education Shirley Hufstedler. This testimony is to highlight the concerns as it relates to the State of Illinois.

Four major issues and their lack of clarity or interpretation have an impact on this state: (1) the process of approving state plans; (2) the authority and compliance activities relating to this law by the Bureau of Education for the Handicapped and the Office for Civil Rights; (3) consistency of standards across states and the policy development and notification method used by the federal government; and (4) the responsibility of the State Education Agency to supervise other state governmental agencies who have some responsibility in educating handicapped students, for example, the Department of Mental Health and Developmental Disabilities and the Department of Rehabilitation Services.

To assist with specifics concerning these four issues, the following will be helpful:

A. Issue one—approving state plans: In the first year, the Illinois plan was approved eight months after the start of the fiscal year. Data or information requested by the federal government was supplied and then additional requests would be made.

B. Issue two—Bureau of Education for the Handicapped/Office for Civil Rights responsibility: The issues can best be stated in a question. The question is which Federal Agency is responsible for interpreting the language in the law and regulations and what is the enforcement responsibilities of each?

C. Issue three—Consistency of standards and policy development across states: In this issue the Bureau of Education for the Handicapped needs to develop a process for consistent policy development and standards. The situation now exists where a response (letter) is generated to a particular question from one state. The response is then shared with other states. It is up to the other states to interpret whether the response is situation specific or generic. Does the letter constitute federal policy?

D. Issue four—State Education Agency Supervision of Other Agencies: This issue places the State Education Agency in a responsibility role with no authority. The responsibilities of the various state agencies need to be identified and the appropriate federal agency could hold each state agency responsible for implementing federal statutes or regulations as related to educating or serving handicapped youth.

These four major issues have many sub-topics available for discussion and resolution. It is generally recognized that several individuals from the state and the federal government are aware of the specific issues. It is also general concurrence that solutions are available in these areas. Many could be solved through effective administration and proper policy development. Others need resolution through the altering of federal rules and regulations. There are some problems that may necessitate an alteration of the law. I would advocate that solutions be sought as quickly as possible and that the first two areas be explored before altering the law.

As to the cost element, the act has never been fully funded yet the expectation is that services shall be provided no matter what the level of funding. This creates a problem for the states and particularly for the local education agencies which must further shoulder the bill if the state formulas for special education funding are not fully funded. Although the formula was to go 5/10/20/30/40 percent of the average per pupil expenditure from 1978 to 1982 and 40 percent thereafter, the present funding is 12 percent of the national average per pupil expenditure. For the year ending September 30, 1981, the level is 12.8 percent of the NAPPE. The following year projections are but 14 percent. For Illinois, for the year ending September 30, 1980 we received $46,144,147 in Public Law 94–142 funding. That figure would have been approximately $76,907,000 if Congress would have supported the level authorized by law. Instead of the projected $48,000,000 for the fiscal year ending September 30, 1980, Illinois would have received approximately $113,000,000. We ask your reconsideration of funding levels in light of the expectation of full service.

I wish to reaffirm my commitment to the concepts and principles of Public Law 94–142 and section 504 of the Rehabilitation Act. Reaching closure on these issues will reduce adversarial relationships, anxieties, frustrations, and accusations and foster a closer federal-state working relationship.

Mr. Simon. Thank you very much.

Someone mentioned a school enrollment here of about 1 million. Is that correct?

Mr. Lehne. Our enrollment is about 460,000. We are about 24 percent of the State's enrollment. I think she may have made reference to the nonpublic school or the suburban school system.

Mr. Simon. What I am trying to get at, and maybe you have that specific figure, what percentage of your student enrollment in the city of Chicago is in special education programs?

Mr. Lehne. About 10 percent in special education programs.

Mr. Simon. What is it statewide?

Mr. Fisher. Statewide we are running a little over 10 percent.

Mr. Lehne. It is 12 percent, Mr. Gabriel says.

Mr. Gabriel. We have 460,000-some youngsters totally in the school system, and we are serving approximately 54,000. So it would be 12 to 12.5 percent for the city of Chicago.

Mr. Fisher. Ours would be 11.9 exactly.

Mr. Simon. Thank you.

There is a problem in the major school systems, the larger ones, in the time gap between identification and placement. What is your situation here in that regard?

Mr. Lehne. I would like to ask Mr. Gabriel to answer that question.

Mr. Gabriel. We are fairly well on line now. We were behind in our psychological. Last summer we had an extensive program funded through Public Law 94–142 moneys that picked up a lot of our psychologicals that had fallen behind. Presently we have about 4,000 requests for psychologicals and we consider that to be on line within the timeframes and the number of psychologists that we have in the system.

So we are doing fairly well from the time of the identification of a special education problem with the 60-day element for the evaluation process and staffing. It is fairly close.

Mr. Simon. If you could identify yourself for the record.

Mr. Gabriel. I am Martin Gabriel, director of special education for the Chicago public schools.

Mr. Simon. You heard an earlier witnes describe the substantial delays for emotionally disturbed children.

Mr. **Gabriel.** I believe the reference that the earlier witness probably was with regard to placing the youngsters once the evaluation process has been completed, and the staff, and the identification of the needs. The delay would occur in placing the child in a private facility that was the determination of the staffing.

We do have some cases where we have a seriously involved child, a multiply handicapped child, a deaf, emotionally disturbed child, and it is extremely difficult to find a facility in the United States in which to place the child. In those cases we have trouble placing. We give interim service in that situation.

Mr. **Lehne.** I think, too, Congressman, since the parent makes a decision as to which agency or facility they will use, sometimes in searching for just that particular one, they may turn down other places where they can be accommodated, and that adds to the delay. But it is a parent imposed one.

Mr. **Simon.** Now I would like to discuss the funding problem you all alluded to, and of which I questioned the two legislators earlier. The argument that I go through every year on the Budget Committee, in opposition to raising this funding closer to the authorized level, is that we are simply providing assistance which will be used for tax reduction, or swimming pools, and the arguments get absurd once in a while. But, in fact, we are not going to be increasing services and assistance to handicapped children if we do fund closer to the authorized levels.

I am interested in how all three of you might respond to that.

Mr. **Lehne.** Let me respond in this way. More and more we are hearing board members and others say: "We simply will not provide programs that are mandated beyond that which we can afford," that is meeting the costs of those programs. I think that it is becoming a nationwide feeling particularly in the big cities.

So we will be seeing cutbacks here regardless of where it is going because the money is not there. The tax base is not there. The willingness of the people to increase taxes is not there. The willingness of the political leadership, or those who provide services in the legislature at the State level are not coming through in terms of the real program costs. It is a major factor.

The other fact is that services to other children are being cut back because of attempting to meet these mandates. I think there will be a limit to that, too.

So, I would say in response to your question, Congressman, if the Federal Government does not up its share, we are not going to see any other source to meet that demand.

Mr. **Bristol.** My response would be that as long as our affluent school districts are willing to put 25 to 30 percent more per year and to keeping up, that is absolutely right. But it is strictly coming from local tax money, and the backlash I was referring to is beginning to build. I am also hearing that the end is coming. We are not going to continue to use local moneys, which we are running out of, for funding which the Congress promised us.

That is becoming a very serious chorus that we are beginning to get now. It was just a rumbling a few years ago, but now it is becoming a chorus practically.

Mr. FISHER. I think that in addition to the descriptions given by both Art and Stan, again to give you some perspective, this year we will be looking at approximately 40 to 50 million new dollars requested from the general revenue, as Senator Berman spoke this morning. That does not include the amount of local dollars from local tax bases that will be used on these programs from September 1980 through September 1981.

So we are talking about somewhere between $70 to $80 million of new tax dollars being spent on these children from State and local sources. We will only be receiving approximately the $48 to $50 million that I alluded to earlier.

Now, what would new dollars do for us, or what would the additional dollars do for us. I think you heard testimony this morning which described a unique child, or group of children that are very high cost in terms of the delivery of services.

We do not have sufficient numbers of facilities within this State to deal with both day and residential placements of multiply impaired, seriously emotionally disturbed types of children. We also do not have the amounts of dollars available to us either through general revenue or local sources to have those facilities in operation in September 1981.

What we must look for are out-of-State facility placements, if we can find them. In some instances, when you have very difficult children, there is almost no facility that is available to that child. Then we go on to something like interim care basis.

This is but one example of what additional dollars would do for us in terms of meeting that need.

I think when you asked the question of what is the percentage of the population served in terms of handicapped relative to the total population, it is skewed tremendously toward the elementary and intermediate school levels. If you look at the high school population, we in this State, and I think that this will be borne out nationally, do not have anywhere near 10 or 11 percent of the handicapped children at the high school level in programs for exceptional children.

Basically, what I am saying is that most of our children are at the elementary and intermediate school age level. We have a tremendous need in the secondary population that must be dealt with.

Mr. SIMON. What is happening; are they dropping out?

Mr. FISHER. We lose some through dropouts. We lose some—I say lose in a very positive way—to some other educational programs that are being offered by the school districts, some which are vocational in nature, and some that provide some types of training programs, some are after school programs that permit the child to work. But there are still a number of children in the secondary schools that could avail themselves of our services.

Mr. SIMON. Are you losing some also because at that point they will be integrated into the high school curriculum?

Mr. FISHER. Yes; we are losing some because they have, in essence, been made self-sufficient to go into the high school and make it on their own.

Mr. SIMON. In Dr. Caruso's statement, she uses a phrase that we hear quite often in Washington, "excessive paperwork." If you, she, or anyone can be more specific and give us examples of how a form can be shortened, or how a form can be eliminated, let us know.

Mr. LEHNE. We will do that.

Mr. SIMON. Do any of the staff members have questions? We thank you very, very much.

Our next witness will be Joan First of the Illinois-Indiana Race Desegregation Assistance Center.

We will enter your statement in the record, and you can proceed in any manner, you prefer. You may read your statement, or you may summarize it.

Ms. FIRST. All right. Because part of the statement is quite complex, and fairly technical and some of its aspects, I would like to read some rather major portions of it.

Mr. SIMON. OK.

STATEMENT OF JOAN FIRST, ILLINOIS-INDIANA RACE DESEGREGATION ASSISTANCE CENTER

Ms. FIRST. As a race desegregation specialist with the Indiana/Illinois Race Desegregation Assistance Center, which is a Title IV Civil Rights Act program at the Indiana University School of Education, I am responsible for the on-site delivery of technical assistance and training related to issues of educational equity in a dozen Illinois and Indiana desegregated and desegregating school districts.

The testimony which I will present today relates to the Desegregation Assistance Center's experience in relationship to a single issue: the classification of excessively large numbers of black children as educationally mentally handicapped, EMH.

I want to describe to you how this issue manifests itself in some of the school corporations we serve, to share with you our approach in designing remedies and finally to present some recommendations based upon those experiences.

The typical school corporation with which I work may have nearly twice as many black children classified as educationally mentally handicapped as would be expected, based upon the numbers of black youngsters enrolled in each district.

Mr. SIMON. Am I correct in assuming that when you say, school corporation, you mean a school district?

Ms. FIRST. That is an Indiana term.

Mr. SIMON. Thank you.

Ms. FIRST. In Indiana we call them corporations.

That is, while black children may comprise 25 percent of the total enrollment of the district, they may amount for 50 percent of enrollment in EMH classes. In some instances almost three times as many black children are enrolled in EMH classes as would be expected.

The vast majority of these black youngsters have IQ scores above 70. In fact, we find significant numbers of minority children with IQ scores in the mid-80's classified as EMH. In many communities, it is common practice to place the majority of white children designated as having special needs in learnings disability classes and the majority of black youngsters with special needs in EMH classes.

Most of the minority children in the EMH classes have been placed largely on the basis of IQ test scores resulting from the administration of instruments which were normed on predominantly or exclusively white populations and are, therefore, inherently inappropriate to serve as a basis for evaluating black children.

From the perspective of the desegregation assistance center, the problem which I have just described represents the most deeply discriminatory action which the public education system can take against a black child and his or her family, for the label "retardate" affixed to the child by the school system permanently alters that child's status before society, profoundly limiting opportunities for future education and employment as well as the child's view of self as a competent person.

From a technical assistance standpoint, the correction of this problem is extremely difficult to achieve, both educationally and politically. This is perhaps particularly true in Midwestern States which have traditionally excelled in the delivery of services to children with special needs.

To discuss the misclassification issue with school personnel in these States is to deeply challenge one aspect of special education programs of which they may otherwise be very proud. The result is significant resistance on the part of the school personnel.

Adding to the depth of that resistance is the fact that school districts under Public Law 94–142 receive funds tied to the presence of individual children in special education classes. To return misclassified children to the regular classroom in large numbers means that school districts not only lose funds under Public Law 94–142, but must assume responsibility for additional costs related to helping classified children and their regular classroom teachers overcome both the child's initial academic problem and the additional distance which the child may have fallen behind while inappropriately placed in EMH classes.

For all these reasons, and I cannot emphasize this point strongly enough, we find that a very unusual degree of leadership and courage is required of school board members and administrators who openly seek to remedy this injustice.

The center's approach in working with such a district is to help local staff to understand the enormity of the inequity experienced by misclassified children and their families, to provide both moral support and new information concerning culturally pluralistic assessment techniques which may be appropriately used to evaluate minority students and to encourage the district to move toward eligibility criteria which make EMH placement dependent upon the child scoring two standard deviations below the mean on both the IQ and adaptive behavior measures.

In addition, we assist with the design of a transition program which provides for development of transition individual education plans for each child and for accurate diagnosis of the child's learning deficits and prescriptive learning experiences in the regular classroom based upon those diagnoses.

A heavy training component—for both teachers and assessment personnel—is a necessary part of any declassification and transition program.

The children most likely to be misclassified are those whom Dr. Jane Mercer of the University of California at Riverside calls "6-hour retardates"—youngsters who perform adequately in a variety of roles in the family and community but experience academic difficulties.

Teachers lacking a variety of regular educational options for such children have historically referred them for special education consideration. Such referrals most often have stemmed from the teacher's singleminded concern for the child in one role, that of student. However, the label which may be affixed to the child as a result of the referral follows the child far beyond the classroom.

Typically, these children have been evaluated for special class placement, primarily on the basis of their score on an IQ test. There is much evidence to suggest that youngsters from ethnic minorities and low socioeconomic status score poorly on IQ tests mainly because their backgrounds have not provided them with adequate opportunities to gain the cognitive skills and knowledge which would help them to pass the test. They may also cope poorly with the formal test situation.

Mercer has stated:

> When the adaptive behavior of such children outside of the academic setting is evaluated, they demonstrate by their ability to cope intelligently with problems in other areas of life that they are not mentally deficient. Persons from backgrounds which do not conform to the community mode are penalized by a one-dimensional definition of retardation based on the IQ score.
>
> On the other hand, when a two-dimensional definition (including both IQ and adaptive behavior scores) is used, persons from minority backgrounds and lower socio-economic status are given credit for their ability to cope intelligently with social roles in non-test situations.

The critical issue of adequately assessing children in terms of both IQ and adaptive behavior for EMH placement was a major factor in the assistance center's decision to suggest to local education agencies that assessment personnel be trained in the administration of SOMPA, the system of multicultural pluralistic assessment, developed by Mercer and others.

While we recognize and have a great deal of sympathy with those black psychologists and others who are working to make the use of IQ tests for the placement of minority students in special education classes illegal, we have learned through experience that change is most likely to occur in public education when school personnel are offered constructive, specific alternatives.

We feel SOMPA represents one such pragmatic option. School psychologists, oriented to the use of IQ tests for evaluating children for special education placement, are quite unlikely to make the decision to voluntarily abandon the use of such tests.

During this period of intense litigation over the use of IQ tests to place culturally different children, SOMPA—with its diversified IQ, adaptive behavior and multicultural scales and culturally pluralistic norms—seems a rational, middle-of-the-road approach.

Based upon all of the above, I would like to suggest to this committee that there are certain critical supports which must be created if school districts are to seriously set about to remedy the situation which today we know deprives thousands of black children of their civil rights to an appropriate education.

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I have a series of five recommendations that I would like to present.

1. I urge that funding be generated for implementation of section 504 of Public Law 94–142 to underwrite the development of transitional programs to serve children who were once labeled handicapped but because of changing criteria or assessment techniques, are not now labeled as handicapped.

2. I urge careful consideration of the need for States to lower the eligibility criteria for EMH placement to scores two standard deviations below the mean on both measures of intelligence and adaptive behavior. Such action would automatically cause large numbers of high adaptive behavior minority children—whose IQ scores most often fall in the 70–80 range—to be returned to the regular classroom.

3. I urge the earmarking of additional funds to encourage LEA's to develop more regular education options which will provide children with the help they need without labeling them as retardates. It is not practical to eliminate the inappropriate use of special education placement without creating other options for children whose academic problems will certainly persist after labels are removed.

What we experience there, Representative Simon, is a situation where we begin to work in the school system, and find that special education has been receding children inappropriately, children who have behavioral problems or who have been placed there for other reasons including discrimination, when we remove that as a way of dealing with those youngsters, we are faced with not knowing how to keep those kinds of referrals from happening in the future.

That is a critical issue. The microcosm of the issue is that Public Law 94–142 certainly cannot be viewed in isolation from other public education concerns and laws.

4. I also urge that funds be made available to both local school corporations and to nonprofit community-based organizations for the purposes of better informing parents regarding their rights under existing law.

5. Finally, I would agree with several of the previous witnesses that there is an enormous need for the creation of systematic mechanisms which will assure closer interagency cooperation among monitoring, compliance and technical assistance agencies regarding these issues especially at the State and local level.

Only when such actions are taken will the system of rewards operating on behalf of providing remedies for misclassified minority students begin to outweigh the rewards which now function on behalf of maintaining the status quo. Thank you.

[The prepared statement of Joan First follows:]

PREPARED STATEMENT OF JOAN FIRST, RACE DESEGREGATION SPECIALIST, ILLINOIS/INDIANA RACE DESEGREGATION ASSISTANCE CENTER, SCHOOL OF EDUCATION, INDIANA UNIVERSITY

My name is Joan First. I am employed as a race desegregation specialist by the Illinois/Indiana Race Desegregation Assistance Center, a Title IV Civil Rights Act program at the Indiana University School of Education.

In that position, I am responsible for the on-site delivery of technical assistance and training related to issues of educational equity in a dozen Illinois and Indiana desegregated and desegregating school districts.

The testimony which I will present today relates to the Desegregation Assistance Center's experiences in relationship to a single issue: the classification of excessively large numbers of Black children as educationally mentally handicapped (EMH). Dr. Frank Aquila, Director, has reviewed and agrees with these comments.

I want to describe to you how this issue manifests itself in some of the school corporations we serve, to share with you our approach in designing remedies and finally to present some recommendations based upon those experiences.

The typical school corporation with which I work has nearly twice as many Black children classified as educationally mentally handicapped as would be expected, based upon the numbers of Black youngsters enrolled in each district.[1] That is, while Black children may comprise 25 percent of total enrollment they may account for 50 percent of enrollment in EMH classes. In some instances almost three times as many Black children are enrolled in EMH classes as would be expected.

The vast majority of these Black youngsters have IQ scores above 70. In fact, we find significant numbers of minority children with IQ scores in the mid-eighties classified as EMH. In many communities, it is common practice to place the majority of white children designated as having special needs in learning disability classes and the majority of Black youngsters with special needs in EMH classes, a practice which also contributes to racial disproportionality. (Some school psychologists, made uneasy by litigation around issues related to EMH placement of minority children, are protecting themselves by placing children who would previously have been classified as EMH in learning disability classes.)[2] Most of the minority children in EMH classes have been placed largely on the basis of IQ test scores resulting from the administration of instruments which were normed on predominately or exclusively white populations and are, therefore, inherently inappropriate to serve as a basis for evaluating Black children.

From the perspective of the Desegregation Assistance Center, the problem which I have just described represents the most deeply discriminatory action which the public educational system can take against a Black child and his/her family, for the label "retardate" affixed to the child by the school system permanently alters that child's status before society, profoundly limiting opportunities for future education and employment as well as the child's view of self as a competent person.

From a technical assistance standpoint, the correction of this problem is extremely difficult to achieve, both educationally and politically. This is perhaps particularly true in midwestern states which have traditionally excelled in the delivery of services to children with special needs. To discuss the misclassification issue with school personnel in these states is to deeply challenge one aspect of special education programs of which they may otherwise be justifiably proud. The result is significant resistance on the part of school personnel.

Adding to the depth of that resistance is the fact that school districts, under Public Law 94–142, receive funds tied to the presence of individual children in special education classes. To return misclassified children to the regular classroom in large numbers means that school districts not only lose funds under Public Law 94–142, but must assume responsibility for additional costs related to helping declassified children and their regular classroom teachers overcome both the child's initial academic problem and the additional distance which the child may have fallen behind while inappropriately placed in EMH classes.

For all these reasons we find that unusual degrees of leadership and courage are required of school board members and administrators who openly seek to remedy this injustice.

The Center's approach in working with such a district is to help local staff to understand the enormity of the inequity experienced by misclassified children and their families, to provide both moral support and new information concerning culturally pluralistic assessment techniques which may be appropriately used to evaluate minority students and to encourage the district to move toward eligibility criteria which make EMH placement dependent upon the child scoring two standard deviations below the mean on both IQ and adaptive behavior measures. In addition, we assist with the design of a transition program which provides for development of transition individual education plans for each child for accurate diagnosis of the child's learning deficits and prescriptive learning experiences in the regular classroom, based upon those diagnoses. A heavy training component—for both teachers and assessment personnel—is a necessary part of any declassification and transition program.

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[1] Based upon Office of Civil Rights School Survey data, observations and data provided to the author by school personnel.

[2] For a full treatment of the label-swapping issue, see James A. Tucker, "Ethnic Proportions in Classes for the Learning Disabled: Issues in Nonbiased Assessment," Journal of Special Education, Vol. 14, No. 1, 1980.

The children most likely to be misclassified are those whom Dr. Jane Mercer of the University of California at Riverside calls "six-hour retardates"—youngsters who perform adequately in a variety of roles in the family and community but experience academic difficulties. Teachers, lacking a variety of regular education options for these children, have historically referred them for special education consideration. Such referrals most often have stemmed from the teacher's single-minded concern for the child in one role, that of student; however, the label which may be affixed to the child as the result of the referral follows the child far beyond the classroom. Typically, these children have been evaluated for special class placement in a fashion which has heavily weighed the significance of a single factor—their score on an IQ test.

There is much evidence to suggest that youngsters from ethnic minorities and lower socio-economic status score poorly on IQ tests mainly because their backgrounds have not provided them with adequate opportunities to gain the cognitive skills and knowledge which would help them to pass the tests. They may also cope poorly with the formal test situation.

Mercer states: "When the adaptive behavior (of such children) outside of the academic setting is evaluated, they demonstrate by their ability to cope intelligently with problems in other areas of life that they are not mentally deficient. . . persons from backgrounds which do not conform to the community mode are penalized by a one-dimensional definition (of retardation based on the IQ score).

On the other hand, when a two-dimensional definition (including both IQ and adaptive behavior scores) is used, persons from minority backgrounds and lower socio-economic status are given credit for their ability to cope intelligently with social roles in non-test situations."[8]

The critical issue of adequately assessing children in terms of both IQ and adaptive behavior for EMH placement was a major factor in the Assistance Center's decision to suggest to local education agencies that assessment personnel be trained in the administration of SOMPA, the System of Multi-Cultural Pluralistic Assessment, developed by Mercer and others.

While we recognize and have a great deal of sympathy with those Black psychologists and others who are working to make the use of IQ tests for the placement of minority students in special education classes illegal, we have learned through experience that change is most likely to occur in public education when school personnel are offered constructive, specific alternatives. We feel SOMPA represents one such pragmatic option. School psychologists, oriented to the use of IQ tests for evaluating children for special education placement, are unlikely to make the decision to voluntarily abandon the use of such tests. During this period of intense litigation (Larry P., Mattie T., etc.) over the use of IQ tests to place culturally different children, SOMPA—with its diversified IQ, adaptive behavior and multi-cultural scales and culturally pluralistic norms—seems a rational, middle-of-the-road approach.

Other aspects of the disproportionality reduction model for special education under development by the Center include the development of training for parents to enable them to better participate in educational decisions affecting their children and evaluation activities likely to contribute to the skimpy existing literature concerning the effectiveness of transition models.

Based upon all of the above, I would like to suggest to this committee that there are certain critical supports which must be created if school districts are to seriously set about to remedy the situation which today deprives thousands of Black children of their civil rights to an appropriate education.

1. I urge that funding be generated for implementation of Section 504 of Public Law 93–112 to underwrite the development of transitional programs to serve children who were once labeled handicapped but, because of changing criteria or assessment techniques, are not now labeled as handicapped.

2. I urge careful consideration of the need for states to lower the eligibility criteria for EMH placement to scores two standard deviations below the mean on

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[8] Jane R. Mercer, Labeling the Mentally Retarded, Berkeley: University of California Press, 1973.

both measures of intelligence and adaptive behavior. Such action would automatically cause large numbers of high adaptive behavior minority children—whose IQ scores most often fall in the 70–80 range—to be returned to the regular classroom.

3. I urge the earmarking of additional funds to encourage LEA's to develop more regular education options which will provide children with the help they need without labeling them as retardates. It is not practical to eliminate the inappropriate use of special education placement without creating other options for children whose academic problems persist after labels are removed.

4. I also urge that funds be made available to both local school corporations and to non-profit community-based organisations for the purposes of better informing parents regarding their rights under existing law.

5. Finally, there is a great need for the creation of systematic mechanisms which will assure closer inter-agency cooperation among monitoring, compliance and technical assistance agencies regarding these issues at the state and local levels.

Only when such actions are taken will the system of rewards operating on behalf of providing remedies for misclassified minority students begin to outweigh the rewards which now function on behalf of maintaining the status quo.

Mr. Simon. Thank you very much for an excellent statement.

I have to confess that one of the things that has concerned me for some time is this whole labeling problem, not only in this area but in general. I remember when I was serving as Lieutenant Governor, they said that there was a group of students at the other end of the hall that wanted to say hello. I went and I asked them where they were from. Then I said, "What grade are you in?" One of them said: "Fourth grade." Then one of the other students chimed in, "We are the dumb class."

I have always thought, I wonder what we are doing to these children. What you are focusing on is that kind of a problem compounded.

Ms. First. In very large numbers, amazingly large numbers. The whole issue of expectations is a critical one because we see children who are basically told by the school system that they cannot achieve, and therefore begin to have lower expectations of themselves. The parents begin to have lower expectations, and teachers certainly have lower expectations.

Mr. Simon. How are you identifying the districts? You work in Illinois and in Indiana; is that correct?

Ms. First. That is right. We are authorized to work in any school district that is planning to desegregate, in the process of desegregating or dealing with second generation desegregation problems of which the misclassification problem is one.

Mr. Simon. How many school districts have you worked with—do you think that the problem that you are describing is a fairly general problem?

Ms. First. Yes, sir, I do.

Mr. Simon. How many school districts have you worked with?

Ms. First. We are working, altogether in the 2 States, with somewhere between 50 and 60 districts. We are not working actively in them all on the problem of disproportionality in special education. However, I have reviewed the statistical data relating to the rest of the districts also, and it is a significant problem.

It is not a problem, I should add, that every district has, but a very significant number of districts do have this problem.

Mr. Simon. As far as you know, would it be equally true of all large school districts as well as the small school districts?

Ms. FIRST. Yes. I don't have personal knowledge of the Chicago situation because we have very limited data available on Chicago. But I can say with some certainty of other large districts that I am familiar with.

Mr. SIMON. Your point 2 on page 6—if you don't happen to know this the staff can look it up—the EMH and TMH standards are these nationally the same, or do they differ from State to State?

Ms. FIRST. No; they are different State by State. It varies as to whether it is just IQ criteria, or they call for both adaptive behavior measures. Indiana, for instance, does not call for adaptive behavior, Illinois, I believe, does not have a State criteria at all, and that in itself is a problem. It affects the degree to which this problem exists in various States because a number of States have adapted a low enough cutoff for eligibility criteria for EMH that the high adaptor behavior children just automatically don't go there. This is a policy decision that can be made that has enormous impact on the problem.

As I said earlier, the kids still have problems. Certainly doing that does not change that fact. There is an enormous need to find ways to support teachers and school districts who deal with those problems.

Mr. SIMON. Any questions from any members of the staff?

Thank you very much for your substantial contribution.

Our next witnesses are a panel: Mary Cotter, Illinois Council for Children With Learning Disabilities; Alfred Rodgers, parent of a handicapped child; Dr. Olson, American Corrective Therapy Association; and Josephine Holzer, Advocates for the Handicapped.

Let me note for the record, Dave Elmer, who is the executive director of the School Problems Commission is here. We appreciate his presence.

Ms. Cotter, we will have your testimony first. We are under some time constraints here, so it would be helpful if you could summarize your statements.

STATEMENT OF MARY COTTER, ILLINOIS COUNCIL FOR CHILDREN WITH LEARNING DISABILITIES

Ms. COTTER. I will be brief.

I am one of those pushy parents of whom you have probably heard various things at different times.

Mr. SIMON. Let me just say, if it were not for pushy parents, we would not have a Public Law 94–142 on the books today. So those pushy parents have done a great deal. [Applause.]

Ms. COTTER. I feel that I have waged a struggle. I did not say war. But I have been in there, when you consider that my daughter is now 16, has severe learning disabilities, had been in four schools in 5 years and we had never moved. It was only because of our determination that she was going to get some services. So you might say that it did take a little effort.

Naturally, when Public Law 94–142 came along, we figured, the put downs and the hassles are over, because now the parents would no longer be told, "Take your child home. We don't have a program for her." Or else, when the child would be in adolescence, and having much trouble in school, to be told, "You know, she can drop out at 16." Believe me, this is what is happening.

Time and experience have shown that it is still the parents who have the burden not only of securing the services for their children, but also of insuring accountability under Public Law 94-142.

Some of our specific areas of concern, just a few because I do not want to take time, would be the least restrictive environment, mainstreaming. This is the idea that the child would benefit in a regular school setting with the nonhandicapped, and he would be better able to cope with the outside world.

At the same time, exposure to the handicapped youngster would help the normal child understand individual differences among people. But studies have consistently shown that teachers and administrators, and their attitudes, have set the tone of acceptance or rejection of these children. They feel that they have to make too many adjustments, and that they are not prepared to handle them.

When inservice programs are offered, teachers and administrators are not mandated to attend. Therefore, the negative attitude is perpetuated. We are asking for specific standards for inservice training for all personnel involved on a continuing basis.

The due process hearing is another area. This does not serve the parents at all well because the deck is really stacked against them if the climate is adversarial. The hearing officer should be selected from a wide range of professional and lay groups if the process is to be truly impartial. There is a notable lack of parents of handicapped children, handicapped persons, and persons employed outside the educational field.

Most hearing officers are employees of the school district, so naturally they are more likely to be more considerate of the financial commitment of the school system, where as the parents have no one to identify with their situation.

It is ironic that these same parents who are threatened and intimidated are actually supporting these high-salaried people who are sitting there looking down their nose at them. Even the attorney representing the school system is paid for by tax dollars.

There is no procedure for evaluating hearing officers, maintaining good quality, or reviewing written decisions.

Finally, the vocational education problem, and I say that it is a problem. Academic and vocational education cannot be isolated any longer. They are related and should be combined from the beginning. To the handicapped child this is crucial. It has been severely neglected.

For that matter, secondary programs throughout the country for the LD students are in bad shape. In rural areas they are practically nonexistent. There is a 50 percent dropout rate, and these kids don't even have the farm to return to.

When you hear the likes of Walter Jacobsen on the 10 o'clock news, during one of the recent Chicago crises, say, "Furthermore, folks, the federally mandated programs have to go. If parents want these special education services, they are going to have to pay for them." Somehow we have to get the message to people like that that they are going to pay for them either way, whether on the welfare roll, or institutions, or the crime rates, what-have-you.

Vocational education is the only route these kids have. As you said earlier, and even to go further, for every dollar invested in vocational rehabilitation services, $7 is returned through Federal and State taxes. We have to get that message out.

In spite of all this, I am optimistic. If I had a child coming along now at 6 years of age, I would feel more secure, more comfortable. But still from all I have said, and from what the others have said before us, we have a long way to go if Public Law 94-142 and its promises are to be a reality. Thank you.

Mr. SIMON. Thank you very much.

[The prepared statement of Mary Cotter follows:]

PREPARED STATEMENT OF MARY COTTER, ILLINOIS COUNCIL FOR CHILDREN WITH LEARNING DISABILITIES

When Congress passed that very important legislation for the handicapped—Public Law 94-142, it was sincerely thought that the problems, hassles and put-downs, that parents as well as handicapped have had to endure, would be a thing of the past. No longer would a mother be told to take Johnny home, because there was no program for him. Or, when he reached adolescence and was having difficulty in school, be told by a counselor, "Well, you know he can drop out at 16". Time and experience however, have proven it is the parents again, who have the burden of securing services, and enduring accountability for Public Law 94-142.

Specific issues of concern are:

Least restrictive environment.—Mainstreaming. The idea of integrating handicapped and non-handicapped children in the classroom—the idea being that the handicapped child would benefit in a regular school setting, an he would be better able to cope with the outside world. At the same time exposure to the handicapped youngster would help the "normal" child understand individual differences among people. Studies have consistently shown that teachers and their attitudes have set the tone of acceptance or rejection of these children. They feel they have to make too many adjustments, and that they are not properly prepared to handle them. When inservice programs are offered, it is not mandatory that teachers attend, and the negative attitude is perpetuated. We are asking for specific standards for inservice training on a continuing basis.

Due process hearing.—This does not serve the parents well, the deck is stacked against them, as the climate is adversarial. Hearing officers should be selected from a wider range of professional and lay groups, if the process is to be truly impartial. There is a noticeable lack of parents of handicapped children, handicapped persons, and persons employed outside the educational field. Most hearing officers are employees of the school districts, and naturally are most likely to be considerate of the financial commitment of the school system. Parents have no one to identify with their situation.

It is ironic that these same parents who are threatened and intimidated, are actually supporting these high salaried people who are looking down their noses at them. Even the attorney representing the school system is paid by tax dollars. There is no procedure for evaluating Hearing officers, maintaining good quality, or reviewing written decisions.

Vocational education.—Academic and vocational education cannot be isolated any longer. They are related and should be combined from the beginning. For the handicapped child, this is crucial, yet it has been severely neglected. There are exceptions in various areas, of course, but for the most part, voc ed teachers do not willingly accept the handicapped, saying there is not an appropriate program, or don't have the time or the resources. As a result, the handicapped are not learning the skills needed to become employable or to make their way in life.

Mr. SIMON. We will hear from all of you and then ask questions. First, Mr. Albert Rodgers.

STATEMENT OF ALFRED RODGERS, PARENT OF HANDICAPPED CHILD

Mr. Rodgers. I did not expect to meet Mrs. Cotter here. She is my teacher in the due process route to go.

I would like to be able to read these four pages of my personal, individual situation. I don't think that it should take more than the allotted 10 minutes.

Mr. Simon, and all committee members, this case involves my son, Anthony James Rodgers, born July 15, 1962. At the present time he is receiving treatment and related services at Henry Horner Children's Center, a State facility.

As the parent of an emotionally disturbed child, I call your attention to the fact that he is at Henry Horner only because of noncompliance with Public Law 94–142, the Education for all Handicapped Children Act.

My son has had need for psychotherapy treatment and special education reading classes for the last 5 years. His entrance into his first year of high school in September 1978 seemed to shake him because of his inability to read his required lesson books. In January 1979 it became necessary to hospitalize our son.

At the end of January 1979 we met for a conference with our son's doctor and hospital social worker. At this conference we agreed that our son's needs were different than other children's. We felt downhearted because we didn't know what to do.

The social worker said she would help us to find a place. All this time the local school district knew where Anthony was.

In March 1979, when Anthony was discharged from the hospital, we contacted the school.

Mr. Simon. May I ask this, so that I understand. When you say that the local school district knew where Anthony was, you mean that it knew what the true situation was?

Mr. Rodgers. Yes, that he was hospitalized because he needed psychotherapy.

A date of April 20, 1979, was set up for a multidisciplinary conference. We didn't know what a multidisciplinary conference was, and not a school person before, during, and after this conference said anything about Public Law 94–142.

At this conference it was agreed that Anthony needed a special kind of education, which the Chicago school system could not provide. When my wife and I let it be known that we felt he could get this special education at Wilson Center, located in Faribault, Minn., there was no objection stated then.

My son and I visited Wilson for a 3-day evaluation, June 4, 5, and 6, 1979. At that time, Dr. Wilson said that Wilson was not the place for Anthony, but that he would help us locate a suitable place.

The local school district was informed of Wilson's decision. When I had a conversation with Mr. Clemons, a social worker for the school district, in early July 1979, I told him I was still waiting to hear from Wilson.

The months of July, August, September were spent in trying to find appropriate placement for our son with no help from the school district.

I want to show you, gentleman, the problems of appropriate placement not only for my son, but for the other children like him. The State of Illinois has no regard for the Education for All Handicapped Children Act, Public Law 94–142.

To shorten our story, we had to retain the services of an attorney at great cost to us. We gave all the papers and other information on Anthony to our attorney. Our attorney and the Chicago Board of Education agreed to a multidisciplinary conference for January 23, 1980. At this conference, an IEP was prepared, and Brown School, located in Austin, Tex., was agreed upon by the board of education people present as the appropriate placement for our son.

All the necessary papers are signed by all parties. Brown School completed the form requested by the Chicago Board of Education. The Chicago Board of Education recognizes the difficulty of appropriately placing our son. Mrs. Jane Kreyling of Pupil Services Center II visited our home and did an investigation prior to the January 23, 1980, staffing and was unable to find an appropriate placement other than Brown School.

We feel, therefore, that this is indeed a very gross oversight of our son's case with regard to Public Law 94–142 which this Subcommittee on Select Education can hopefully have corrected. Thank you.

Mr. SIMON. Thank you very much.

[Prepared statement of Alfred Rodgers follows:]

Dear Paul Simon

Mr. Simon & all subcommittee members this case involve my son Anthony J. Rodgers born 7-15-1962. At the present time he is receiving treatment & related service at Henry Horner Children's Center, a state facility.

As a parent of a emotionally disturb child, I call attention to the fact that he is at Henry Horner only because of non compliance of P. L. 94-142. The education for all handicapped children.

Our son has had a need for psychotherapy treatment & special educational reading classes for the last 5 yrs.

His entrance into his first year of high school, Sept. 1978 seemed to shake him because of his inability to read his required lesson books. In Jan. 1979 it became necessary to hospitalize our son.

At the end of Jan. 1979 we met for a conference with our son's doctor & a hospital social worker. At this conference we agreed that our son's need's were different than other children. We felt downhearted because we didn't know what to do.

The social worker said she would help us to find a place. All this time the local school district knew where Anthony was.

In March 1979 when Anthony was discharged from the hospital we contacted the school. A date of April 20, 1979 was set up for a multidisciplinary conference. We didn't know what a multidisciplinary conference was & not a school person before during or after this conference said anything about P.L. 94-142.

At this conference it was agreed that Anthony needs a special kind of education which the Chicago school system cannot provide. When my wife & I let it be knowing that we felt he could get this special education at Wilson Center, located in Faribault, Minn. there was no objection stated then.

My son & I visited Wilson for a three day evaluation June 4,5,6, 19 At this time Dr. Wilson said Wilson was not the place for Anthony but they would help us in locating a suitable place.

The local school distict was informed of Wilson's Decision, When I had a conversation with Mr. Clemons a social worker for the school district in early July 1979. I told him I was still waiting to hear from Wilson.

The months of July, August, September were spent in trying to find appropriate placement for our son with no help from the school district.

I want to show you gentlemen the problems of appropriate placement not only for my son but for other children like him, wich the State of Illinois has no regard for the education for all handicapped children act, P.L. 94-142

To shorten our story we had to retain the services of a attorney. We gave all the paper's & other information on Anthony to our attorney.

Our attorney & the Chicago Board of Education agreed to a multidisiplinar conference for Jan. 23, 1980. At this conference a I.E.P. was prepared & Brown School located in Austin, Texas, was agreed upon by the board of education people present as an appropriate placement for our son.

All the necessary paper's are signed by all parties. Brown school completed the form requested by the Chicago Board of Education.

The Chicago Board of Education recognizes the difficulty of appropriately placing our son; in that Ms. Jane Kreyling of Pupil Services Center II visited our home, & did a investigation prior to the January 23, 80. staffing & was unable to find an appropriate placement other than Brown Schools.

We feel therefore that this is indeed a very gross oversight of our son's case, with regard to P.L 94-142 which this subcommittee on select education can hopefully have corrected.

Mr. & Mrs A. S. Rodgers

Alfred S. Rodgers
1309 N. Western Ave
Chicago Ill 60622
312-489-7391

Mr. SIMON. Our next witness is Bill Olson, American Corrective Therapy Association.

STATEMENT OF D. BILL OLSON, AMERICAN CORRECTIVE THERAPY ASSOCIATION

Mr. OLSON. Thank you very much, Congressman Simon. I should like to ready my testimony, and it will take approximately 10 minutes.

My name is Bill Olson, and I am executive director of Home for Creative Living, a community residential facility in Windom, Minn. I am also a certified corrective therapist and my presence here is relevant to both concerns. I would like to clarify that I am not a physical therapist, in that a corrective therapist is a physical education specialty, just like elementary physical education would be. Therefore, it is a specialty focusing on services to the handicapped.

To focus immediately on my purpose as it relates to this hearing and Public Law 94–142, I would like to discuss the needs for physical education services for handicapped children in our public schools.

The Federal Government has appropriated substantial sums of money authorized under Public Law 94–142 to provide equal educational opportunity for handicapped children. This law has addressed the importance of physical education in the total curriculum by mandating this service in the body of the law.

The wisdom of this mandate is empirically substantiated from my personal experience in the development and operation of a community residential facility for 44 multiply handicapped children and youth. Also, my previous experience as an administrator of a residential facility for adults for 9 years and function as a corrective therapist in a State hospital for 3 years has provided me with valuable insight in my current capacity.

A primary concern in developing the community residential facility was the ability of the public school system to meet the educational needs of this unique population. The principal of the school was an active member of the facility's advisory board and participated in all the admission screenings of residents being considered for placement. He also took the initiative to visit several schools in the State which were providing services for multiply handicapped children. He observed the schools had corrective therapists on their staff and that they were recognized as a vital part of the total educational planning and programing.

Based on these findings, the public school system hired five additional teachers, nine aides, a speech and a physical therapy consultant, and a corrective therapist to operate the adapted physical education program. The value of the corrective therapist on the staff is well documented in the individual education plans that have been developed for the children over the past 3 years.

For example, this past school year there were 253 goals written for children from the community residential facility and 137 of these goals were gross motor goals. A sample of some of these goals is as follows: initiating transfer skills from wheelchair; increase head control; increase weight bearing on arms; increase or maintain range of motion; increase head and trunk control; improve reaching skills;

increase rolling skills; increase positive responses to vestibular stimulation; improve static balance; strengthen appropriate reflexes; increase relaxation; increase sitting balance; and increase skills leading to independent ambulation.

Over 50 percent of the individual education plans were developed, implemented, and supervised by the corrective therapist. Without an adequately trained individual, much of the appropriate education would not have been implemented or even identified.

A study was completed by Patrick J. Byrd and Bruce M. Gansneder on preparation of physical education teachers as required under Public Law 94-142. The purpose of the study was to assess the level of preparedness of public school physical educators to meet physical education requirements of this law.

The study included the knowledge of 26 conditions and the motor needs and tolerances of these conditions. The respondents generally knew less about the motor needs and tolerances than the nature and cause of the conditions. Among the respondents, 65 percent rated their formal training in physical education for the handicapped as poor or very poor, while only 12 percent rated this training as good or very good.

I would like to review the conclusion of this study as it indicates conditions that have been apparent to me over the course of the past few years through my involvement in the American Corrective Therapy Association and the programs for the handicapped. The conclusion is as follows:

> These data suggest that in terms of formal training, special knowledge of handicapping conditions and self evaluation of ability to perform various tasks related to physical education programming for handicapped students, many physical education teachers in public schools of Virginia may not be adequately prepared to provide motor experience for handicapped individuals as required under Public Law 94-142. Given the sampling techniques used in this study, the fact that two-thirds of Virginia public school physical educators were trained out of state, and the implications of other studies which I quote, it is reasonable to suggest that this general conclusion applies to other states.
>
> Considering the results of this study, the requirements of Public Law 94-142, and the needs of handicapped students, preservice, and more importantly inservice, teacher training must increase its emphasis on providing physical educators with knowledge of handicapping conditions and appropriate programming competencies and skills. Although a broad range of handicap conditions should be covered in such training, a considerable emphasis must be placed on working with retarded students, the highest incident area to be encountered by the physical education teacher.

A recently published study by Aloia, Knutson, Minner & Von Seggern reported that physical education teachers indicated their training, experience, and abilities were significantly lower in regard to the physically handicapped child. They believe that this response could be the result of general lack of exposure to the physical handicapped child in the regular physical education class.

The issue of adequate professional preparation is not limited to physical education as there is need for advanced education in preparing secondary school special educators to meet the needs of developing youth with multiple handicaps whose adult life will require unique services and special skills for coping with daily living, occupational preparation, and psychosocial challenges.

The American Corrective Therapy Association has a unique history of providing physical education services to our country's veterans through the medical community of the Veterans' Administration. The intent of the founding fathers of corrective therapy and the leadership since 1946 was that this service was not only valuable to meet an urgent need for which it was organized, but that the service would be readily available to geriatric populations in nursing homes and domiciliaries, private medical sector, sports medicine, and school age children through adapted physical education in the public or private schools.

Corrective therapists have been primarily employed in the Veterans' Administration hospitals until recent years when there has been a shift in the employment trend toward the public school system. Much of the demand for corrective therapy services has been realized with the advent of Public Law 94-142 which provided the funding to equalize educational opportunities for the handicapped student.

Corrective therapists were getting scattered recognition throughout the Nation from special educators in the early 1970's as motor education became a more prominent emphasis in the curriculum of the special education population. The need for specialized physical education was augmented when public school systems became aware of the student with multiple handicaps, including profound and severe mental retardation.

A major misunderstanding that needed to be bridged by many corrective therapy students wishing to enter the educational field was explaining their background as physical education majors. Also, many times a physical education degree did not guarantee certification as an educator in a particular State. This fact in itself has been a burden to the involvement and recognition of corrective therapists as qualified adapted physical educators throughout the 50 States.

It is my resolve here today to advise and recommend that the standards set forth by the American Corrective Therapy Association for certification in corrective therapy be included in the body of Public Law 94-142.

The current terms cited in section 121a.14(b) (2) (ii), special physical education, adapted physical education, movement education, and motor development lack uniform interpretation for professional preparation and have an arbitrary value for expected outcomes. Inclusion of corrective therapy in this section would establish a reference to a uniform standard for professional preparation and performance competency for physical education services to the handicapped.

It is my strong belief that we are not meeting the physical education and developmental needs through the educational process in many areas of our country due to lack of professional preparedness. Administrators in school systems, State department personnel, and compliance officers need to be familiar with corrective therapy and what it has to offer the more severely handicapped populations in the public school system. Without this proper reference, the mandated physical education services will continue to be misunderstood and not properly acknowledged.

I believe it is in our national interest in implementing Public Law 94-142 that a discipline such as corrective therapy be recognized for its contribution to the health and educational field and that we capitalize on this experience for our school age population. Thank you.

Mr. SIMON. Thank you very much.

[Prepared statement of D. Bill Olson follows:]

PREPARED STATEMENT OF D. BILL OLSON, AMERICAN CORRECTIVE THERAPY ASSOCIATION

My name is Bill Olson and I am the Executive Director of Home for Creative Living, a community residential facility in Windom, Minnesota. I am also a Certified Corrective Therapist and my presence here is relevant to both concerns. To focus immediately on my purpose as it relates to this hearing and Public Law 94-142, I would like to discuss the needs for physical education services for handicapped children in our public schools. The Federal Government has appropriated substantial sums of money authorized under Public Law 94-142 to provide equal educational opportunity for handicapped children.

This law has addressed the importance of physical education in the total curriculum by mandating this service in the body of the law. The wisdom of this mandate is empirically substantiated from my personal experience in the development and operation of a community residential facility for 4 multiple-handicapped children and youth. Also, my previous experience as an administrator of a residential facility for adults for nine years and function as a Corrective Therapist in a state hospital for three years has provided me with valuable insight in my current capacity.

A primary concern in developing the community residential facility was the ability of the public school system to meet the educational needs of this unique population.

The principal of the school was an active member on the facility's Advisory Board and participated in all the admission screenings of residents being considered for placement. He also took the initiative to visit several schools in the state who were providing services for multiply handicapped children. He observed the schools had Corrective Therapists on their staff and that they were recognized as a vital part of the total educational planning and programing. Based on these findings, the public school system hired five additional teachers, nine aides, a speech and a physical therapy consultant and a Corrective Therapist to operate the adapted physical education program. The value of the Corrective Therapist on the staff is well documented in the individual education plans that have been developed for the children over the past three years. For example, this past school year there were 258 goals written for children from the community residential facility and 137 of these goals were gross motor goals.

A sample of some of these goals are as follows, initiating transfer skills from wheelchair, increase head control, increase weight bearing on arms, increase or maintain range of motion, increase head and trunk control, improve reaching skills, increase rolling skills, increase positive responses to vestibular stimulation, improve static balance, strengthen appropriate reflexes, increase relaxation, increase sitting balance, increase mobility, improve gait pattern, increase muscular strength and coordination, improve hand-eye coordination, and increase skills leading to independent ambulation. Over 50 percent of the Individual Education Plans were developed, implemented or supervised by the Corrective Therapist and without an adequately trained individual, much of the appropriate education would not have been implemented or even identified.

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Considering the results of this study, the requirements of Public Law 94–142, and the needs of handicapped students, preservice and, more importantly, inservice, teacher training must increase its emphasis on providing physical educators with knowledge of handicapping conditions and appropriate programing competencies and skills. Although a broad range of handicap conditions should be covered in such training, a considerable emphasis must be placed on working with retarded students, the highest incident area to be encountered by the physical education teacher.

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Bird, Patrick J., and Gansneder, Bruce M., "Preparation of Physical Education Teachers As Required Under Public Law 94-142." Exceptional Children, Vol. 45 No. 6, (Mar. 1977), pp. 464-466

Aloia, Gregory F., Knutson, Richard, Minner, Sam H., Von Seggern, Mary. "Physical Education Teachers' Initial Perception of Handicapped Children." Mental Retardation, Vol. 18 No. 8, (Apr. 1980), pp 85-87

Mr. SIMON. Our final witness on this panel is Josephine Holzer.

STATEMENT OF JOSEPHINE HOLZER, PAST PRESIDENT, ADVOCATES FOR THE HANDICAPPED

Ms. HOLZER. I do have testimony that I prepared, but in the interest of time I will not read it, except for the last part. I will simply state that I am the parent of a physically handicapped child who is 14. She has been physically handicapped with a progressive disease since she was 15 months old.

There are two major components to the special education system in its chief Federal legislative package, Public Law 94-142, that I would like to discuss today. The first one is, implementation, compliance, or enforcement; and the second is the due process hearing procedure.

On April 16, 1980, the Education Advocates Coalition published its report on "Federal Compliance Activities to Implement the Education for all Handicapped Children Act" (Public Law 94-142). Among the 13-member agencies of the coalition is Chicago's Better Government Association whose representative was not able to come today.

I wholly support the conclusions of this report, and I certainly hope that the committee has a copy. Every parent I know who has had access to it agrees with it. Their findings are in keeping with my own experiences as a volunteer advocate.

Of each of the 10 major areas of noncompliance in the report, I have either personal experience or knowledge in our local district, our joint cooperative, our State, with special reference to the Governor's Purchased Care Review Board—or from the NEA panel hearings.

Mr. SIMON. Let me ask you. When you say, "our local district," which local district are you talking about?

Ms. HOLZER. A suburban district.

Mr. SIMON. Thank you.

Ms. HOLZER. The four conclusions about the Bureau of Education for the Handicapped are also in keeping with my experiences. In my dealings as an advocate with BEH, I too found that paper is their chief medium of activity. In meeting with State and Federal compliance officers, they have been found by paper demands—forms to fill out, questions to be asked, procedures to follow, et cetera—and have scarcely been able to react to or take in other information that was presented. These well-intentioned people were so intent on looking for certain facts that they were unable to process other seemingly unrelated facts. Consequently, they only found what they were looking for.

In BEH-sponsored regional hearing on Public Law 94-142 in which I have participated, many of the Federal and regional officers were ill equipped for the task at hand, oftentimes embarrassingly so. Some of them were simply not able to process the information made available to them in a coherent fashion, even for immediate feedback.

All too frequently these officials appeared to be so unfamiliar with the basic issues and concerns of the handicapped that they were not able to grasp the meaning or significance of isolated events as recounted to them by advocates or parents.

These officials are not unsympathetic. They do care. They are not insensitive. They do have some awareness. They are not, however, capable of functioning as advocates within the system for the benefit of the handicapped consumer. They do not have any depth of understanding of the gut issues as experienced by the consumer.

As one university professor is fond of saying to parents,

> Those professionals are old school—they do not understand the new school thinking of Public Law 94-142, of the basic rehabilitation philosophy, or of the independent living concepts.

Having stated this as a problem, I am not sure I can suggest a solution. The basic problem as we see it is one of attitudinal barriers among those very professionals who are supposed to be helping us. The basic solution, then, must somehow improve attitudes, must be an experimental process, a living with the problem—not just knowing someone who is—and not just sitting in a wheelchair for a day. The solution must involve an often painful and always difficult process, experiencing the feelings and lives of another, walking in someone else's shoes.

Overcoming barriers will not be accomplished with a book, a course, a resource, a credential. But it will involve a living, breathing familiarity with the real-life people and the situations that they experience on a daily, continuing basis.

Admittedly, the solution may not even be viable, but lives are at stake. Whole families are suffering. Human potential is being wasted. Somehow the consumer must be involved in the solution process, and for handicapped children that means parents.

As the report states on page 4,

> No change in the legislation or the regulations is necessary. The key is a commitment to implement Public Law 94-142 with effective enforcement by responsible government agencies.

Commitment, hopefully based on awareness, belief, and a deep understanding of the needs.

My comments on the second point are much shorter.

Until very recently I have counseled parents to avoid due process hearings and instead to try to work within the local system, to arm themselves with knowledge, a smile and a pleasant manner, and unending patience. I have spoken against due process hearings to every Federal official whose ear was available to me.

Although the regulations stipulate that the procedure is not to become adversarial, it always does. How could it not? The two parties have tried to work together and have failed. In fact, in some cases communication has entirely ceased between them.

I frequently give this example. A due process hearing is like a divorce court, except that after the judge has ruled on the issues and sometimes even placed the blame, he then tells the two parties to go back home and live together. A very untenable situation.

A professional from the University of Illinois has developed a mediation system which he offered to the Illinois Board of Education 1 year ago, and there has been no response to his offer. His system is very appealing to me because it has an understanding of the immediacy of the human needs. In fact, it almost has the air of crisis counseling.

It would be an excellent method for avoiding a deepening of a small misunderstanding or miscommunication. Obviously mediation cannot solve all the problems, but it certainly would improve some situations by clearing the air and resolving petty issues that might otherwise escalate into hearings.

Forgive me for a personal example. On May 1, after 9 years of philosophical differences, I requested a due process hearing from my local district. Since that time I have been asked to withdraw my request. I have been the object of personal innuendoes directly spoken to me by the local superintendent, and I have had the local director of special education refuse to administer any tests to my child.

At this moment in my district there is a small private meeting, which I was to have attended. We are preparing documents against the local system together. In southern Illinois there are 22 parents who have filed for separate hearings against one local district due to its refusal to serve their children.

How long, gentlemen, must these parents—must our children—suffer at the hands of professionals with the "white coat, white hat" syndrome? How long?

I would like to urge each of you to purchase and read the latest book from the Carnegie Council on Children, "The Unexpected Minority: Handicapped Children in America." It states the problems from the consumer's point of view far more carefully than I am capable of doing.

Before I finish, I would like to comment on some of the previous testimony. I would particularly like to support statements of Des Jardins, Fisher, Cotter, Rodgers, and Olson.

In regard to psychiatric counseling, I would like to urge one cautionary note. Psychiatric counseling is certainly necessary for many. It is especially necessary when people are under stress due to a handicapping situation. However, it should be avoided at all costs when it is an effort to get the handicapped individual to adjust to the able bodied individual's view of life. That is unacceptable. It is tried on a daily basis in school districts.

The second point I wanted to make was to refer to an editorial in the Wall Street Journal on May 9, 1980, called Mandate Madness, which is a typical example of another point of view. My organization answered the letter. I don't know if it has been printed yet. I hope that it will be either this week or next week.

There are many points in that that are basically erroneous. First of all, he refers to 94–142, and then talks about crippled children as though that were the majority of the cases, which is absolutely untrue. It is a very misinformed piece of opinion.

I would like to support very strongly the statements about discriminatory testing. As a member of the NEA panel, we held hearings in three separate States, and it occurred in every single one of the States.

There is a study report that the NEA produced. It is available from the Teachers' Rights Division for $3.50. They have 15 volumes of testimony which you might be interested in discussing with Mrs. Martha Ware, who is an attorney with the Teachers' Rights Division in Washington.

I would also like to support Mrs. Cotter's comments about vocational education. I have a friend who is in a due process hearing right now for her 17-year-old son who has cerebral palsy. As she understands it, it is the first due process hearing in this State on vocational education issues.

My last comment is about Mr. Olson's adaptive PE. My daughter who is physically handicapped had that in her IEP for several years. This year I requested in the IEP conference that she be removed from the class because I felt that it was not serving any good end. The teacher applauded that. The teacher of the adaptive PE class felt that she did not belong in there. His attitudes were strictly those of an able-bodied individual, and the remarkable thing was that he grew up with a sister who was physically handicapped.

I spoke to the superintendent of our district about it, who had a behavior contract written between that teacher and my daughter. There were five points in the teacher's contract, and there was one on my daughter's side. Thank you very much for the opportunity.

[The prepared statement of Josephine Holzer follows:]

PREPARED STATEMENT OF JOSEPHINE HOLZER, PAST PRESIDENT, ADVOCATES FOR THE HANDICAPPED

My name is Josephine Holzer. I am the past President of Advocates for the Handicapped, a non-profit tax-exempt corporation of handicapped adults, parents of handicapped children, and professionals and other volunteers concerned about the rights of handicapped individuals. My youngest daughter who is 14 years old is physically handicapped due to an exceedingly rare metabolic disorder that has, since she was 15 months old, caused her skeletal muscles to ossify progressively with the concomitant result of loss of joint mobility.

Always an active volunteer, I have for the last seven years restricted my volunteer activities to those which would benefit the handicapped community. In so doing I have been greatly enriched and gained broad knowledge and experiences far beyond my experience as the parent of a physically handicapped child. Among other things I have been a board member of the local affiliate of the Association for Children with Learning Disabilities; a member of the Governor's Committee on the Handicapped (until it was disbanded); an observer at the White House Conference on Handicapped Individuals; one of two parents on a panel for the National Education Association that held hearings in three states on the implementation of Public Law 94–142; a judge for two years for the Miss Wheelchair Chicago contest; a member of the Education Committee of Advocates for the Handicapped; a member of the Educational Finance of the Illinois League of Women Voters. As a delegate to the up-coming White House Conference on Families, I shall represent the concerns of the handicapped community. As Editor of ADVOCATOR, the newsletter of Advocates for the Handicapped, I print material relevant to the problems, issues, resources, meetings, etc. of interest to the handicapped community, especially in the area of special education.

There are two major components of the special education system and its chief federal legislative package, Public Law 94–142, that I would like to discuss today: (1) implementation, compliance, or enforcement; and (2) the due process hearing procedure.

On April 16, 1980, the Education Advocates Coalition published its report on "Federal Compliance Activities to Implement the Education for All Handicapped Children Act (Public Law 94-142)." Among the thirteen member agencies of the coalition is Chicago's Better Government Association. I wholly support the conclusions of this report—and so does every parent I know who has had access to it. Their findings are in keeping with my own experiences as a volunteer advocate. Of each of the ten major areas of noncompliance cited in the Report, I have either personal experience or knowledge in our local district, our joint co-operative, our state (especially the Governor's Purchased Care Review Board), or from the N.E.A. panel hearings. The four conclusions about the Bureau of Education for the Handicapped are also in keeping with my experiences.

In my dealings as an advocate with BEH, I too found that paper is their chief medium of activity. In meetings with state and federal compliance officers, they have been bound by paper demands—forms to fill out, questions to be asked, procedures to follow, etc.—and have scarcely been able to react to or take in other information that was presented. These well-intentioned people were so intent on looking for certain facts that they were unable to process other, seemingly unrelated facts. Consequently they only found what they were looking for. In BEH-sponsored regional hearings on Public Law 94-142 in which I have participated, many of the federal and regional officers were ill-equipped for the task at hand, oftentimes embarrassingly so. Some of them were simply not able to process the information made available to them in a coherent fashion—even for immediate feed-back.

All too frequently these officials appeared to be so unfamiliar with the basic issues and concerns of the handicapped that they were not able to grasp the meaning or significance of isolated events, as recounted to them by advocates or parents. These officials are not unsympathetic—they do care. They are not insensitive—they do have some awareness. They are not, however, capable of functioning as advocates within the system for the benefit of the handicapped consumer. They do not have any depth of understanding of the gut issues as experienced by the consumer. As one university professor is fond of saying to parents, "Those professionals are 'old school'—they do not understand the 'new school' thinking of Public Law 94-142, of the basic rehabilitation philosophy, or of independent living concepts."

Having stated the problem, I am not sure I can suggest a solution for you. The basic problem as we see it is one of attitudinal barriers among those very professionals who are supposed to be helping us! The basic solution then must somehow improve attitudes, must be an experiential process, a living with the problem—not just "knowing someone who is . . ." and not just sitting in a wheelchair for a day. The solution must involve an often painful and always difficult process—experiencing the feelings and lives of another, walking in someone else's shoes. Overcoming the barriers will not be accomplished with a book, a course, a resource, a credential—but it will involve a living, breathing familiarity with the real-life people and the situations that they experience on a daily, continuing basis. Admittedly, the solution may not even be viable, but lives are at stake—whole families are suffering—human potential is being wasted. Somehow the consumer must be involved in the solution process—and for handicapped children that means parents.

As the Report states on p. 4, "No change in the legislation or the regulations is necessary. The key is a commitment to implement Public Law 94-142 with effective enforcement by responsible governmental agencies." Commitment—hopefully based in awareness, belief, and a deep understanding of the needs.

My comments on the second point are much shorter. Until very recently I have counseled parents to avoid due process hearings and instead to try to work within the local system, to arm themselves with knowledge, a smile and pleasant manner—and unending patience. I have spoken against due process hearings to every federal official whose ear was available to me. Although the regulations stipulate that the procedure is not to become adversarial, it always does! How could it not? The two parties have tried to work together and have failed: in fact, in some cases communication has entirely ceased between them. I frequently give this example: a due process hearing is like a divorce court—except that, after the judge has ruled on the issues and sometimes even placed the blame, he then tells the two parties to go back home and live together! A very untenable situation.

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Thank you for hearing me * * * thank you for all of our children * * * and thank you for all of the suffering parents.

Mr. SIMON. Thank you very much for your testimony.

Mrs. Cotter, you referred to hearing officers; you are obviously dissatisfied with the people who are named as hearing officers.

Mrs. COTTER. You could say that.

Mr. SIMON. I would be interested in your response, and the response of any others on the panel who may have had an experience.

Mrs. COTTER. According to information we had this past year of the 85 certified hearing officers in Illinois, 2 are parents. It is very hard to select a hearing officer. I know that the procedures differ in the various States. For example, in Virginia the only requirement is that he be a lawyer. In Illinois, the hearing officer attends a training period, and he has to have certain requirements, degrees, or this and that. But most of the time they are special education people. They certainly have to have the special education background. So that in itself precludes any chance of impartiality.

When parents ask how we choose a hearing officer, because when the parent is given the name of the hearing officer there is a small summary written as to his credentials, and what he is doing now, and what he has been doing. But at the same time it really does not tell you anything.

We would like to know how has this person served the clients that he was representing, or that he was listening to, you might say. There is never any feedback, or there is no way of obtaining any information. We find this very disconcerting, such as the hearing that is taking place this week with the vocational education people.

Mr. SIMON. Are there others who have had any experience?

Mrs. HOLZER. I would just like to say that in our hearing, the five officers that we were given to choose from, not one of them has dealt with the physically handicapped.

Mr. SIMON. Mr. Rodgers, your son is now 17, as I read this. Is that correct?

Mr. RODGERS. Right.

Mr. SIMON. Henry Horner is a State facility if I remember correctly.

Mr. RODGERS. Correct.

Mr. SIMON. Is he receiving training or assistance there?

Mr. RODGERS. Yes.

Mr. SIMON. But from your viewpoint it is not the kind of assistance that he needs.

Mr. RODGERS. It is not the appropriate placement that the board of education agreed on, and that we concurred with also. The idea is finances.

Mr. SIMON. The board of education said that they could not do it because of finances; is that it?

Mr. RODGERS. Before you can place your son, or any individual, they have to know how this is going to be funded. Although the board of education acknowledges that this is the only appropriate placement for him, they will only pay a number of dollars.

Mr. SIMON. I don't mean to be asking questions that you would rather not answer. If I get too personal, please don't hesitate to decline. What kind of costs are we talking about here?

Mr. RODGERS. We are talking about a cost of approximately $2,500 a month total package against $500 or $550 verbally offered by the board of education. They do not want to document this.

I do have this matter before HEW and the Civil Rights. They will look at it, and they will tell you, "You are right." But there is no compliance with the law.

As I said before, Mary Cotter was my teacher at a due process hearing class. They were so obviously wrong in this particular case that they preferred not to go the due process route. We had the staffing, and they accepted all of it. In this case, they said that it was a very bad violation, but the Governor's Purchased Care Review Board, like Mrs. Cotter and many people in the State of Illinois know, seems to be the stumbling block. They just will not comply with the law.

Mr. SIMON. You are talking about roughly a $2,000 per month disparity between what the need is and what they will pay.

Mr. RODGERS. Correct.

Mr. SIMON. You are feeling strongly that the schooling that could be offered in Texas, as I recall, would provide your son an opportunity that he simply is not getting at the present time.

Mr. RODGERS. When you are the parent of a child who needs the services of residential placement, it is not very easy to accept placing your child away from home. Even though we know that it is the best thing for him, you always like to have your kid with you. Even at holidays he might not be home with you. This does not come easy. It comes over a period of a couple of years, with the hospital care during the crisis, and there will be some adjustment to this. With the special education classes in reading he would raise his reading level.

But when you are living with the problem, and you are experiencing the high telephone bills, your time out from work, your rental cars when you don't own an automobile, your getting around a city or a State going to the Wilson, talking to very determined and educated people who want to help and do help you. Then when the board of education here says, "You are right," you have won a hollow victory because there is still, in fact, no compliance.

My boy right now, at the present time, instead of being at the State facility, should be in Brown and getting the proper treatment he needs.

Mr. Simon. Again, I don't want to get personal, but sometimes we can persuade our colleagues in individual cases, where statistics don't mean anything. You earn roughly how much a year?

Mr. Rodgers. $22,000.

Mr. Simon. Simply putting your son in this facility will take roughly $30,000 a year.

Mr. Rodgers. Between $25,000 and $30,000 minimum.

Mr. Simon. Yes.

Mr. Olson, you refer to standards set forth by the American Corrective Therapy Association. I don't know whether we have those. Could you send those to us.

Mr. Olson. I have copies with me.

One thing that has been mentioned several times during the hearing is related services, and the people in the Bureau of Education for the Handicapped does cover corrective therapy services under related services. My concern is that corrective therapy, although it is called a therapy and often thought of as a medical service, is, really, an educational service. Our whole background is education.

I think we are missing a valuable opportunity across the country not to utlize corrective therapists who graduate with a B.A. degree, which is usually a 5-year program because it requires dual credentialing, and being certified by the American Therapy Association, and also credentialing in their particular State in education.

I feel that currently we don't have anything to relate to as far as a quality physical education program. It would be very easy to amend the law and to insert corrective therapy along with the adaptive physical education specialty, motor specialists, and so forth. This would give us something to identify as a standard, and that would not negate the other specialties.

Mr. Simon. If you can provide us with four copies of those standards here, we would appreciate it.

Mr. Olson. I will.

Mr. Simon. You mention at the bottom of page 3 the lack of ability of PE teachers, but this is based on studies that were all made prior to the passage of 94–142. Has the situation improved? Obviously, from what you are saying, it has not improved enough. But is the situation improving in physical education training in the schools at the present time?

Mr. Olson. I think across the Nation we are finding some universities that are providing better curriculum in adaptive physical education, but it is scattered and there is no uniform standard, so that you can go from one State to the next, or even within a State.

You will find that one university is putting out an adaptive physical educator with perhaps a three-credit course in adaptive physical education, whereas compared to the American corrective therapy standard there are about 18 specific quarter credits in adaptive physical education required.

This is one of the problems. We don't have any uniformity across the Nation. I know the programs for the handicapped under Dr. Julian Stein has been concerned about this. At one time I proposed a grant to study this lack of uniform standardization in physical education.

The big thing is, the type of child I am serving in the residential facilities is the backward child, the child who was in the back ward of the institution just a few years ago, and still in many parts of the country are in the back ward of the institutions.

They are the nonambulatory, multihandicapped, severely mentally retarded child. These children need someone with a little more expertise than the average physical educator, or adaptive physical educator.

The beauty of it is that it is a related service like OT or PT. You are not bringing in a medical adjunctive service when you talk about a corrective therapist. He is an educator.

Mr. SIMON. OK.

Mrs. Holzer, you referred to a professor at the University of Illinois who has developed a mediation system. What is the name of that professor?

Mrs. HOLZER. I have a copy of it.

Mr. SIMON. Good.

Mrs. HOLZER. I did not ask him if I could bring it, but I am sure that he will not mind.

Mr. SIMON. Thank you very much.

You talk about southern Illinois, and you sav that in southern Illinois there are 22 parents in one district; what district is that?

Mrs. HOLZER. I don't know.

Mrs. COTTER. It is Peoria. They are LD students.

Mr. SIMON. That did not seem like southern Illinois.

Mrs. HOLZER. I am sorry. I come from Virginia, and I get all mixed up.

Mrs. COTTER. Sixty LD students were refused diplomas last week because they could not pass the minimum competency test, although they had enough high school credits to graduate. We all know that LD students cannot pass tests. Anyhow, they were denied diplomas.

Mr. SIMON. Mrs. Holzer, obviously from your statement, both formal and informal comments, you have been following the scene fairly closely.

Mrs. HOLZER. Yes.

Mr. SIMON. You heard Joan First just before you.

Mrs. HOLZER. Yes.

Mr. SIMON. Do you have any comments on what she points out as a real problem of racial bias in some of the placement?

Mrs. HOLZER. In California it also includes Hispanics, Chicanos, Latinos. Out there they usually sav, Chicano.

The panel was in Savannah, Ga., where it is a real problem; in Des Moines, Iowa, where it is quite as much of a problem, but still is a statistical fact; and in California where it is also a very severe problem. She states it quite accurately.

The lady who has done the research that she referred to is also discussed in the NEA panel report as a viable option to the regular IQ tests.

Mr. SIMON. Are there any questions from any member of the staff?

We thank you very much for excellent testimony, and we appreciate your contribution very much.

Finally, we have a panel of three. They are not on our formal agenda. Julie Shander, Key to Help for Handicapped Children; Mr. William Plekavic, who is a parent representing the United Services for Autistic; and Patricia Emmerich, a parent who is legislative chairperson for Children's Mental Health Coalition.

Again, I don't mean to be cutting anyone short, but we have some time problems here. So if you can keep your statements brief, it will be helpful.

STATEMENT OF JULIE SHANDER, KEY TO HELP FOR HANDICAPPED CHILDREN

Mrs. Shander. My name is Julie Shander, and I am the parent of a 2½-year-old daughter with hydrocephalus, and physical development delay and motor delay. I am just starting into this process. She has been in a private preschool for 2 years for physical therapy.

I have a statement, but I am not going to read it. I am just going to make two comments. I feel that school districts are priding themselves on a very low ratio of due process hearings. I feel that this is only because they are not informing parents of their rights.

You go into your local school district office, and you ask them questions. Nobody seems able to answer your questions. I finally sent to Springfield, Ill., and got a copy of the rules and regulations which I read from cover to cover, and found that it was just terrific. But like everyone has said, school districts are not complying at all.

I think parents are finding out more information from parent groups, and speaking with other parents. Our organization covers 4 co-ops and 46 school districts in south suburban Chicago. I am not going to go through all of our problems, some of them are listed in my statement.

I think that school districts are just not informing school districts of their rights at all. I think they feel that if they tell us what we have the right to know and the services that are available, we are going to be asking for more.

I think that in the long run there are going to be more due process hearings because of the simple fact that they cannot let us as parents realize the services that are available.

Also, just one more thing. I do feel that parent input should be encouraged. I know that it is mandatory, but here again when we go to the school districts, parent input just seems to have no significance whatsoever in the IEP staffing meetings.

We just had a staffing meeting the other day, and out of the four therapists that did an evaluation of her, she screamed and cried through all of them. Their evaluation was based only on what I told them she was able to do, yet when I sat down and tried to tell the school district what I wanted for her, it was just brushed off as it were not important.

A parent is the only person who knows their child. We know more about them than any educator could possibly know.

Thank you.

[The prepared statement of Julie Shander follows:]

PREPARED STATEMENT OF JULIE SHANDER, KEY TO HELP FOR HANDICAPPED CHILDREN

My name is Julie Shander. I am the parent of a 2½ year old daughter with hydrocephalus, physical development delay and motor delay. I also represent Key To Help For Handicapped Children, a parent support organization. Key To Help For Handicapped Children is an organization dedicated to assisting parents of handicapped children in obtaining all of the educational opportunities that their children need. Our goals are educate the parents as to their legal rights, assist in the planning for and development of the suitable educational programs for their child, and assisting parents to deal with school districts and special educational personnel. Because parents often feel inadequate at these meetings. it is our purpose to help parents be thoroughly prepared for any and all meetings and staffings by giving them a good working knowledge of applicable laws and procedures. Our organization covers four cooperatives and forty-six school districts.

Our main areas of difficulties are:

A. Lack of information.
B. Inaccurate information.
C. Transferring children from parent-infant to early childhood programs.
D. Summer programs.
E. Children with birthdays that fall in the summer months.

A. & B. Lack of information and inaccurate information.

School districts and educational personnel are not providing parents with all the information they need to adequately program for their childrens best educational needs. Many times parents are unaware of services and programs they are entitled to because school officials choose not to inform them. Frequently, when parents question statements made by school personnel, the parents are given false information i.e., (1) a parent not wanting to sign for a psychological case study evaluation the school representative informed the parents the test was mandatory and if they did not sign the request their child would not be placed in a special education program; (2) parents were in disagreement with school representatives as to the classifications placed on their child (multiply handicapped, physically handicapped, learning disabled) and the school representative told them if they not agree to these labels other labels more severe such as mentally educable would then be used; (3) parents are accused by school representatives of being "bad" parents and that it is the fault of the parents that their child is like he/she is. The list could go on and on but for the sake of brevity I will go on to other areas.

C. Transferring children from parent-infant to early childhood programs

Since Public Law 94–142 became law it requires school districts be responsible for children from ages three through twenty-one. In most larger metropolitan areas there have been private parent-infant and early childhood programs in existence for twenty years or more. Many private programs have served as models for public programs. Yet, these private programs that are certified and licensed by the state and federal governments are now being made to take second and third seat to public programs. These private programs are comparable and often offer more supportive services to those parents who must adjust to the responsibilities of being the parents of a special child.

D. Summer programs

Summer programs are a major stumbling block for our school districts budgets. Adjustments and getting back into the swing of things are difficult tasks for all of us at any age, but for a handicapped child they can be almost insurmountable. A three month interruption of physical therapy, occupational therapy, and speech therapy can cause our special children a sizable setback.

E. Children with birthdays that fall in the summer months

Due to the course of nature some children have the misfortune of being born in the months of June, July, and August. The child who turns three years of age during these months are held in limbo for special educational programs. School district personnel tell us their budgets are set up months in advance and do not allow for these children to be placed or staffed until the September after their third birthday.

In closing I would like to make five recommendations:

1. Because most school district personnel are neither voluntarily nor adequately informing parents of services and legal rights, we feel independent parent support organizations be funded by the state and federal governments.

2. Private early childhood programs be given first consideration to those children who have already been in private parent-infant programs.

3. Summer programs be mandatory for those children who desperately need the continuity of such programs to prevent regressions.

4. School districts be mandated to staff those students whose birthday fall in the summer months, the semester before their third birthday.

5. Parent input and information have a greater importance in staffings, multidisciplinary and I.E.P. meetings.

Mr. SIMON. Thank you very much.

Mr. Plekavic.

STATEMENT OF WILLIAM PLEKAVIC, UNITED SERVICES FOR AUTISTIC

Mr. PLEKAVIC. I would like to make one opening comment about what the professionals that I did hear speak earlier said, in addition to other comments that I will make. I will keep them as brief as possible.

Not once did the other professionals say, "We need money to give these kids what they need." They only said, "We need money to meet Public Law 94–142." You will have to forgive me if I get a little bit emotional, but I am the father of autistic twins that are 6-years-old.

If they were really intent on talking of the children, then they would have been saying, "We are just meeting the law. We have to go past meeting the law. Let's give the kids what they need." Their only complaint was with the law, and that is what they want the money for. If they were really interested in the children, they would be interested in their needs, and not just what the law says.

Now, I will go back to making sense.

PRESCRIPTIVE PROGRAMMING

We recognize that now that public school are mandated to educate our children, the nature of their disease has not changed. They are still in need of medical diagnosis and treatment. As supported by their IEP, they should receive individual, specialized treatment according to their needs.

Our experience shows that programs for the autistic tend to advance one modality only, to the exclusion of all others, forcing children to be shaped to meet the needs of the program, rather than the program meeting the needs of the individual child.

It is our contention that because there is no single modality which has been proven to be universally successful, parents should be made aware of all available modalities, with their inherent benefits and side effects. The parent should then have the right to choose that treatment plan he deems most appropriate for his child.

At the present time, most educational programs evangelize one modality and the child becomes a hostage to that one modality, with all options effectively denied to him. I had a hearing, and I have not submitted the hearing decision because I wanted to edit things out, names and such. I will be forwarding it to you.

Mr. SIMON. That will be entered in the record along with the statement.

All of your statements will be entered in the record, too.

Mr. PLEKAVIC. I would like to add a few things.

My wife and I have autistic twins. It took us over a year to get a proper diagnosis that they are autistic. When we finally did, we put them in an SMA program in a co-op which is on the south side of Chicago.

They had an overall program for austic children. What they did was to take our children and throw them into that program, and say, "The child has to fit the program, and not the program to fit the child," which is an IEP. So their IEP was really useless.

We have been going to therapy for 2 to 3 years. We found the program that the children were in was conflicting with the therapy that we had. As far as the correctness of our therapy, we had a number of 7-day professionals with impeccable credentials and our approach seemed the most appropriate for the children.

We had a disagreement with the school district in conjunction with the co-op. To give an example of staffing, they had 10 to 12 people, and my wife and I trying to make input against 10 to 12 people against us. There was no way. So we had a hearing. We took the children out of school because we found their program to be in conflict with their therapy program as it existed, and as is ongoing. We participate in the therapy ourselves, my wife and I.

We took the children out of school because we personally felt that it was damaging to the children to have the two approaches. They had been in school since August of 1979.

There was some violation there, but we felt that to keep them in that program, and to put them in that school would be too much of a conflict, and we would find regression, which we could see, and other problems.

We had a hearing, and the hearing has been completed as of May of 1980. We essentially got 75 to 80 percent of what we requested, in conjunction with our therapy, to be used.

At the present time the school district is appealing the decision. We think they are appealing the decision, but we have not been notified, and this is over the 15 days which is in the rules and regulations within which we have to be notified. We think they are appealing past the deadline, which they have not even notified us in writing if they are or not.

Mr. SIMON. What school district do you live in?

Mr. PLEKAVIC. School District 132.

Mr. SIMON. Which is where?

Mr. PLEKAVIC. It is right next to the city of Chicago. It is 1 mile outside of the city of Chicago.

Mr. SIMON. In which direction.

Mr. PLEKAVIC. The south side.

We had an attorney at the hearing, and the same attorney says that with the law and the regulations as they are, there is really no enforcement provision in them. You win the hearing, but there are no teeth in it to force the school districts to comply with the hearing.

I don't know how long I am going to be doing this because I still have got them out of school. I can't put them in that school program as it is, and that is the only program that exists for us on the south side. We intend to send them away.

It is not the greatest thing to send your children away. I have read studies where the longer a child is away from a person in an institution, the less parental involvement there is, and after a while it just drops off entirely. I am not about to see my children being institutionalized.

Right now Public Law 94–142 is my children's only protection because of the input that parents have, and at least their rights are there. We need some teeth in that law to enforce our rights. As I said, the administrators are not really concerned with the children. If they were, they would have been talking in a different fashion, in a different manner.

If it were not for me and my wife as parents, I don't know what they would be receiving. I will say that there may be a few good administrators out there, but I cannot say for sure. The only protection my children have are their parents, me and my wife, and other parents who protect the rights of their children, to receive what is appropriate and what is practical.

When they talk about costs and backlash, let them come and live with me and my situation. They will never complain about the cost.

This is all I have got to say.

[The prepared statement of William Plekavic follows:]

PREPARED STATEMENT OF WILLIAM PLEKAVIC, UNITED SERVICES FOR AUTISTIC

Prior to Public Law 94–142 the denial of community based education to autistic children led to the eventual banishment of the child from the community into institutional care. The rational given for the denial of educational service was that these children were too severe and required clinical settings so that they could secure 24 hour programming with prescriptive treatment. The fact is, we all know that this rationale was hypocrisy in its highest form. All that was really accomplished was to remove the child from the community and warehouse the individual for the remainder of his life.

Autistic families look to 94–142 for the beginning of the end of this process. With the De-institutionalization Act, 94–603, autistic families can look to maintaining the child in the home and the natural community.

The lack of knowledge about autism was one of the problems posed for not providing educational services; also the low incidence made it difficult to properly group children by age and functioning level.

It is obvious that the intent of 94–142 was to place the responsibility for the education of autistic individuals on the public schools. The intent of 94–142 was for the states and local school districts to develop appropriate programs to meet the complexities of this problem. Our criticism at this time is, that after 5 years of having this mandate, we find that the State of Illinois and the school districts have not accepted the challenge and are reverting back to administrative and bureaucratic tactics to avoid the responsibilities for appropriate programs.

The following are specific areas of concern to all parents:

Prescriptive programing

We recognize that now that public schools are mandated to educate our children, the nature of their disease has not changed. They are still in need of medical diagnosis and treatment; as supported by their IEP, they should receive individual, specialized treatment according to their needs. Our experience shows that programs for the autistic tend to advance one modality only, to the exclusion of all others, forcing children to be shaped to meet the needs of the program, rather than the program meeting the needs of the individual child.

It is our contention that because there is no one single modality which has been proven to be universally successful, parents should be made aware of all available modalities, with their inherent benefits and side effects. The parent should then have the right to choose that treatment plan he deems most appropriate for his child.

At the present time, most educational programs evangelize one modality and the child becomes a hostage to that one modality, with all options effectively denied to him. We submit to you evidence of this in our due process hearing report, Piekavic vs. SMA.

STATE AND REGIONAL PLANS

Autism has a low incidence. It is academic whether or not autistic programs are administered by local or regional educational agencies; what is obvious is that local special education cooperatives do not have adequate population to provide disciplines such as occupational therapy, speech therapy, physical therapy, etc., that may be required for an individual plan. Therefore, it is incumbent upon the Illinois Office of Education (IOE) to bring into being the necessary support services to:

(1) train teachers and therapists in all effective techniques of educating autistic children.

(2) to develop a variety of educational plans and bring about a statewide plan, so that the total resources of our university and mental health departments could work together to bring about a comprehensive plan.

EXTENDED DAY

Ironically, with the advent of 94–142, 24 hour custodial care, previously justified, is no longer available to the child; now we parents have to struggle and fight to secure 6 hours of service a day. We must deal with administrators who disregard the severity of the problem and expect autistic families to adapt to the same schedules given normal children. A child that is institutionalized costs the taxpayer $120 a day; it is not unreasonable that parents demand as many hours of programming as our children need. The Armstrong versus Kline decision supports our position of a full year program with an extended day. Therefore, we feel that Congress should define the school year for the severely and profoundly handicapped as a minimum of 50 weeks, with programming during vacations and with an extended day. Remember—autism does not take a holiday. This type of intensive is the best alternative to institutionalization.

In closing we fear that it is the tactic of many school districts to revert back to non-categorial programming which statistically brings the autistic child into the minority of the total special education population. It allows school districts to singularly isolate one child and accelerates the institutionalization of that child. This is a statistical ploy often used to dispose of difficult children; in this way they keep the population disseminated.

It is for this reason that we feel the absolute need for a specialized program with highly trained individuals. We also believe that we can mainstream our children into normal settings and bring about a normal and therapeutic environment for them.

We, the parents of United Services for the Autistic, who are committed to mainstreaming our children at home, have proven

(1) That we can maintain the autistic child in the home and, with the support of a good school program, can bring about dramatic improvement in their individual development. The natural home, the school and the community have proven to be the best therapeutic setting for autistic children.

We fear that the lack of direction or leadership by the State of Illinois will allow programs which parents have fought so hard to secure, to become diluted; they will lose the spirit that was evident in the inception of these programs and without proper leadership from IOE, the programs will burn out and revert back to the levels that existed prior to 94–142. It is obvious then that the plight of the autistic family is as serious now as it has ever been; for a compassionate nation to sit by and allow our children to be disregarded is immoral. We need the help of Congress to direct the states to bring about intensive research and funding into this area.

We also submit the "Blueprint for the Lives of our Children," a comprehensive plan, accepted by the Illinois Department of Mental Health and Developmental Disabilities but not as yet acted upon by the office of education.

- Public Information Service. usA will be happy to provide information or speakers to any civic group interested in autism
- Quarterly newsletter

Government Agencies

- Illinois Department of Mental Health and Developmental Disabilities/ Subregion 9 Office, 1106 W. Mannheim, Westchester, 60153 (345-0504)

FOR FURTHER INFORMATION, WRITE OR CALL usA, 416 S. MONROE, HINSDALE, ILL. 60521. PHONE: 323-4836

VI MEMBERSHIP

All family members of an autistic person residing or being served within DuPage or Western Cook County (subregion 9).

Professionals: staff members of service agencies and professionals serving the needs of the Autistic are extended membership.

We receive no financial support from any government agencies; members are not assessed dues, but are simply to identify their child and participate in the services we create. Those who cannot give time for our efforts, are asked to make a contribution to support these efforts.

VII usA MEETINGS

Meetings are a systematic means of introducing parents to service agencies in the Western suburbs and by so doing identify the needs of the parents to the professionals involved.

MEMBERSHIP APPLICATION FOR usA

____
NAME

____
ADDRESS

____
CITY STATE ZIP

____
PHONE

Check One: PARENT____
PROFESSIONAL____
STUDENT____

If parent: AGE OF CHILD____
SEX ____
PRESENT PLACEMENT ______

If professional:
PLACE OF EMPLOYMENT ____________

If student:
AREA OF STUDY______________

Please find enclosed contribution for $______payable to United Services for the Autistic, 416 S. Monroe, Hinsdale, Illinois 60521

UNITED SERVICES FOR AUTISTIC

I WHAT ARE AUTISTIC CHILDREN?

Autistic children are children that do not relate to their environment; (in some cases, they are totally withdrawn) they either do not speak or have very limited speech; the language problem is compounded by very disruptive behaviors; some autistic children are self-destructive.

II IS THERE A CURE FOR AUTISM?

No, there is no cure at the present time. What is more tragic is the practice of removing autistic children early in life to institutions where they are warehoused and are denied any proper treatment techniques or therapy. Insulating the community from this population is the heart of the problem. Our children must learn to live within the community.

III WHAT IS usA?

United Services for the Autistic is a community based direct-service oriented advocacy group, designed to mobilize resources within our community.

The 4 "I's" of usA are:

1. Identify autistic population and their needs
2. Instigate qualified agencies, private and public, to provide these services; create and administer services where needed
3. Integrate the autistic into existing community services, mobilizing the resources of the community
4. Include all autistic persons and families into a comprehensive system of services

IV PHILOSOPHY OF usA

The best alternative to a total cure is developing the child in the community. United Services for the Autistic parents choose to control the destiny of their children as we do for our normal children. In the past the responsibility for the child has been usurped by social scientists who have claimed to be better equipped to meet the needs of these children. The results of this policy are tragic— we have warehoused a population of human beings and ignored all responsibilities for seeking cures or improving the quality of life for these people.

It has been the philosophy of usA to bring about a total support system to help families to maintain the autistic member at home and in the community. We are happy to report that this philosophy has now been adopted by the federal government, directing state governments to create community support systems for all developmentally disabled individuals. We are committed to the creation of programs in the community that are intelligently designed and relevant and responsive to our families. We put particular emphasis on respite care and group homes that respect and maintain the integrity of parents and family life. We, as parents, want to be involved and contribute to the destiny of our children's lives. We want all the help that we can secure to make us better parents and we do not seek to surrender this role to anyone.

V INFORMATION AND REFERRAL:

The following programs serve the autistic in the western suburbs:

Public Education

- EDSED (East DuPage Special Education District)
  Swartz School, Oak Brook Terrace
  Salt Creek School, Villa Park
- PAEC (Proviso Area School for Exceptional Children)
  Maywood
- LADSE (LaGrange Area Dept., of Special Education)
  Elm School, Hinsdale

Private Schools

- Little Friends, Naperville

Special Programs

- Elmhurst College, Theraplay Program, Elmhurst, Illinois

Support Services

- Saturday Therapeutic Play Program, Ray Graham Ass'n.
- Music Therapy, Elmhurst College
- Oak Community Respite Care, Oak Park, Illinois
- Acorn Hill Equestrian Center, Naperville. (Therapeutic Horseback Riding)
- National College of Chiropractic Medicine, Lombard, Illinois. (Chiropractic treatment for autistic individuals).
- Summer Family Institute, usA funded and sponsored, Lake Geneva, Wisconsin

Mr. SIMON. Our final witness will be Patricia Emmerich, legislative chairperson of the Children's Mental Health Coalition.

STATEMENT OF PATRICIA EMMERICH, LEGISLATIVE CHAIRPERSON, CHILDREN'S MENTAL HEALTH COALITION

Ms. EMMERICH. Thank you, Mr. Simon.

I am sorry that our group has been so poorly organized. Mr. Rodgers has held up our name, maybe, by doing so well. But of the two other people who were to speak today, they have encountered the kind of personal crises that only the parents of emotionally disturbed children and adolescents could possibly even understand, and did not apparently even get you notified that we were to speak today. So I came racing in, if you can call the Eisenhower racing under any circumstances.

I would like you to remember, as I give you a few brief remarks about my own daughter, that I could sit here for 4 days probably and tell you about 200 or 300 cases, or at least 20 or 30, each one scarier than the last, and also that my daughter is an extremely lucky person right now because she is in treatment. It is just possible, if I can get a hold of some money and mortgage my house, that she can stay in treatment.

I am not saying that to be sarcastic. She is fortunate. I can tell you stories of children who have been out of school for 3 years in their early teens; of parents who have quit work to stay home and supervise children because they have been expelled from school. The school district is able to make no provision for residential placement because the Governor's Purchased Care Review Board will not authorize fees that are charged by the facilities which will take the child.

I can give you documentation I have, a 1½-inch packet, and I assume you will be able to read it over during your lunch hour, of letters from facilities.

Out of our coalition persons called 50 or 60 facilities out of the State of Illinois, and I believe only one of them was interested in an Illinois admission. They had never had an Illinois admission, and that was the only reason that they were willing to even discuss it. Most of the facilities that we would contact will say, "No, we will not consider an Illinois admission because of the paperwork problem, because of the low fees set, and because the State of Illinois refuses to pay therapy, or most other related services."

To be specific, I placed my daughter in Brown last June 21. The local education authority had held the multidisciplinary staffing April 19. She had been hospitalized in a short-term facility all winter and fall.

By June, I knew she could not stay in that short-term facility any longer. They are too restrictive. They are not designed, as Mr. Rodgers pointed out, to keep youngsters a long time. They peak maybe after 3 to 5 months. I think Henry Horner is a similar kind of facility, in most ways, to maybe Ridgeway Hospital, or that situation.

I took her to Brown June 21. The contracts had gone in to the State of Illinois in early May, but nothing had been determined between

Brown and Illinois. Brown told me that they would not admit on the basis of an Illinois contract anyway because their experience with Illinois was so bad.

There is documentation in that packet for Brown, for Willowblen, and for many other facilities who say the same things in writing.

Brown told me that my daughter's situation was such that it would be extremely dangerous for her to have to move or come home before her treatment period was up.

She is extremely self-destructive, and regresses to suicidal behavior each time she has been moved, even moved across the courtyard at Brown from one building to another. So moving her is completely out of the question.

My insurance company, a private, self-insured area, did say that they will pay the two components that Illinois will not pay, which are professional supervision of the program which comes to $10,000 to $12,000 a year at Brown, and therapy, which comes to $10,000 to $12,000 a year.

In Illinois, the Governor's Purchased Care Review Board will authorize $13,000 for room, board, and tuition only. They insist adamantly that Public Law 94–142, I was told by Dr. Manderville at BOB, prohibited them from paying anything else.

Don Blodgett of BEH told me in a meeting that if it was on her multiple-staffing report, it should be paid. Her staffing report does say flatly, therapy for her emotional problems primarily.

Anyway, I put her at Brown by paying $5,000 of fees in advance. I have never been reimbursed for the transportation down there yet. I know one boy who stayed at Madden 6 months longer than he needed to partly because his parents were waiting for public aid or public health, or whoever it is, to come up with the plane ticket money because they could not afford the plane ticket.

By the time we get to this situation, we have often spent everything we could on private treatment.

Anyway, my daughter has been down there since last June. My insurance has run out. At the advice of both the Governor's Purchased Care Review Board, and my local education authority, my lawyer—I have $1,700 worth of legal fees right now, incidentally—managed to get the department of mental health finally to send us an application for a care grant. It takes a lot to get the application from them, but she finally threatened them, and they sent one.

I applied in September for a care grant to pay for the therapy and professional services component of the Brown bill. I heard last week, that is 9 months later, from them. This is the first time that they initiated a contact.

No; they did not initiate it. My lawyer called and said, "What is happening," as she does every couple of months. We got a letter saying: "We refuse to give you a care grant for your daughter because the facility at Brown where she is—this does not apply to the facility Mr. Rodgers' son will be going to, I don't think, but the one where my daughter is going, even though it is on IOE's list, and the school district placed her there.

DHM says that it is a hospital because they have a hospital accreditation, which it has so you can utilize insurance, otherwise the $30,000 that my insurance company paid down there would not have been paid. Many day care centers in Illinois get this accreditation. But the department of mental health will not pay anyone or anything that has that accreditation because the law in Illinois, in the mental health code reads "nonmedical facilities."

After 9 months I found out that because of the place she was in, they would not pay. They also reminded me in the letter, and it is in here, that on her 18th birthday the care grant would stop anyway. So even that avenue is out.

I have spent hours and hours per week every week. I have spent $1,700 on attorney's fees. I have had the assistance of a lot of good people, and today I face the problem that if I cannot come up with $20,000 for this year—I am being billed now for about $10,000 that Illinois owes. Because they are so far behind, Brown is saying that I have to pay some of it, too.

Even ignoring that one, if I cannot come up with $20,000 or $30,000 for this year and next year, I will have to take my daughter out and she will commit suicide, and there is no question about that.

If I can keep her in, her prognosis is excellent. They anticipate that within 1 to 2 years she can come home, go to junior college to get her GED, and then go to college. The State of Illinois is willing to let her sit down there. They would be willing to put her in Henry Horner and pay $165 a day, which I think they are paying, but they will not pay $100 a day at Brown.

They will let her come home and die. They don't care about that because it does not cost them any money. Or, they will let her come home and be a burden to the State for the rest of her life. I don't know that she would turn to crime, but it costs $13,000 a year to keep someone in a Joliet correctional facility, and many of our youngsters go that route.

Again, I could sit here and tell you horror stories about everything else, but I will not. That briefly is what I wanted to say today. As I said, Mr. Rodgers has already covered a lot of the details. Mine parallels to the age of the child, and the steps we took.

Mr. SIMON. Your daughter is about 17?

Mrs. EMMERICH. She is 17. She will be 18 early in December. The woman who was supposed to come today and testify has a daughter sitting at Rivers Edge. She has been accepted at Brown, but they cannot get the care grant through. Her daughter's birthday is the same day as mine. DMH has said: "I suppose that we can get you a care grant, but remember that it ends on her birthday." This is for the San Marcos facility at Brown, too.

That child has been at Rivers Edge months longer than the optimum treatment time with the insurance paying. That family is bankrupt.

The other woman who was to testify is our president. She declared bankruptcy legally, I think, 5 years ago, in the middle of her daughter's early treatment. She has an autistic young child who is now at the orthogenics school.

I will not wander off into that. As I said, I could go on for days. The stories we get are hair raising. Ours are the good stories because our children are in treatment.

Mr. SIMON. Part of your problem, obviously, is with the State of Illinois, and not with Public Law 94-142.

Mrs. Emmerich. That is correct.

Mr. Simon. Have you contacted State legislators to try and get help?

Mrs. Emmerich. Yes. Senator Berman met with us, and agreed to write a bill that would be helpful to us. The bill that he has written I believe will prolong the treatment process, will wipe out any due process recourse parents have in placement, because it allows two men in the State to wipe any placement the school and parents have agreed upon.

It says that the Department of Mental Health should help parents, but does not amend the mental health code sufficiently to allow the Department of Mental Health to do that. In short, I think the bill probably will not help anybody, and it will cause a lot of trouble.

There is a movement now in the State to put the youngsters in in-State facilities. Illinois chose several years ago to become a purchased-care State. For example, we have 300 kids in out-of-State placement and they are in different kinds of facilities. There are enough to warrant duplication back here in the State. It was a wise decision. But now they are thinking that it will be cheaper. I have heard legislators say over and over: "We are going to get these kids back here and it will be cheaper."

Now, they are talking about opening up DCFS facilities which are overcrowded, not allowed to provide therapy, and opening wings of DMH facilities and putting the kids in without even a pilot program to set up.

We are really alarmed about the direction the State seems to want to go to keep from having to pay these out-of-State tuition bills.

Mr. Simon. Let me ask you a question. Would it cause any problems for your daughter if there were any publicity on the situation?

Mrs. Emmerich. It might. But after a good deal of concern about it, I have given some publicity already. I have felt that we may just have to do it. I have been on TV, and some of her friends have seen me.

One of our parents very wisely said: "If those kids are getting their act together, they are getting used to the fact that they have got some labels that they are going to have to fight." I kind of feel that way about it. In a sense, I don't feel as free to drag her name into it as my own, but I don't mind some publicity. In fact, that is one of the reasons we are here, I think.

Mr. Simon. Mrs. Shander, when you say that the school districts are not complying, do you think the school districts understand what their legal obligation is, and what they are supposed to be doing?

Mrs. Shander. Speaking for my own school district, the assistant superintendent is in charge of special education, and he is like a tape recorder. No matter what you ask the man, he just keeps telling you, "I am mandated by Public Law 94–142, and this child will be placed * * *" No matter what I say to him, he just repeats it and repeats it. I feel like I am talking to a wall.

I could tell him that I am going to jump out the window, and he would just sit there and say, "I am mandated by Public Law 94–142." It does not make any difference.

I am asking my school district to leave my child in a private preschool that is going to be cheaper than to put her in a public school. It is like I am asking them to cut off their right arm. They are telling me that financially this and that, and yet it is cheaper.

When I told them that I had a copy of the State rules and regulations, they asked me how I got it. He said that he did not even have one himself. He is the assistant superintendent in charge of special education, and he doesn't even have a copy. I told him that I had two, and I would be glad to give him one. [Laughter.]

Also, if I may say one more thing.

Mr. **Simon**. Yes.

Mrs. **Shander**. They filled out my child's IEP before they even had gotten the case study evaluations back from the four therapists, and had placed labels on her of multiply handicapped, physically handicapped, and learning disabled.

My child is not even 3 yet; how can they say that she is learning disabled when she is already talking in four word sentences, feeding herself, and whatever. I told them that I would not allow that on her IEP. He told me that if I wanted to fight labels, they would put even more severe labels on her, such as mentally trainable or mentally educable.

They not only lack information, but they intimidate the parents terribly.

Mr. **Simon**. Mr. Plekavic, you refer in your statement to a document, "Blueprint for the Lives of Our Children."

Mr. **Plekavic**. I gave that to Judy Wagner. We are not really that big on funding, so we only have one copy of the blueprint.

Mr. **Simon**. This is a blueprint developed by the Illinois Department of Mental Health?

Mr. **Plekavic**. No; it was sort of developed by the organization.

Mr. **Simon**. It was developed by your advocacy group?

Mr. **Plekavic**. Right; it was developed by the parents of autistic children. There was professional involvement, but it is mostly just parents getting involved and trying to pursue what they can for their children, who are basically all autistic, even though we have a number of other children in there. They don't exclude any type of children from it.

Mr. **Simon**. We had an autistic child as a witness before our committee a few months ago. He was really one of the most impressive witnesses we have ever had.

Mr. **Plekavic**. I would like my children to get to the stage where they could become a witness.

Mr. **Simon**. I thought of that when you said that you had 6-year-old twins that it would be great at some point.

I find that members of the Budget Committee, or any other committee, are not hostile. They just generally don't understand. We can come up with loads of statistics, and it is still very difficult to get the point across. But if they can see live human beings, it would be a completely different situation.

Mr. **Plekavic**. I can bring them in, if you want.

Mr. **Simon**. I am not advocating that right now. I think somehow we have to make the whole thing more real to them.

Mrs. **Emmerich**. If they could realize that we are talking about short-term things, especially ED and autism to a degree. There is a definite lessening of commitment of money as this progresses because they improve. My daughter is almost well. It is a miracle what a good facility can do.

Mr. SIMON. From the most conservative viewpoint, we ought to be investing money.

Mrs. EMMERICH. Fiscally only, you should be investing it. If that was your only criterion.

Mr. SIMON. We thank you.

This concludes our hearing. We appreciate the interest shown by all of you here today.

[Whereupon, at 12:15 p.m., the subcommittee adjourned, to reconvene at the call of the Chair.]

[Material submitted for inclusion in the record follows:]

JUL 03 1980

INDIANA UNIVERSITY
RACE DESEGREGATION ASSISTANCE CENTER

ILLINOIS/INDIANA RACE DESEGREGATION ASSISTANCE CENTER

SCHOOL OF EDUCATION
BLOOMINGTON/INDIANAPOLIS

July 1, 1980

Paul Simon, Chairman
Subcommittee on Select Education
Cannon House Office Building
Washington, D.C. 20515

Dear Chairman Simon,

It occurred to me that you might be interested in learning about some of the developments which have occurred in relationship to the special education misclassification/declassification issue on which I presented testimony at the regional oversight hearings on PL. 94-142, at Chicago on June 6.

A few days after the hearing, the Board of Education for Champaign Unit #4 Schools voted to implement new EMH criteria and a transition program for declassified EMH students. The end result of this action is that about 70 elementary children formerly labeled as EMH will be returned to the classroom, with special instructional supports over the next two year period. (Unit #4 Schools are 24 percent black, but their EMH classes are more than 73 percent black).

Shortly thereafter Dr. Herman Norman, Associate Director of the Illinois/Indiana Race Desegregation Assistance Center; Dr. James Mahan, Superintendent of Unit #4 Schools; Dr. John Weaver, District Director of Special Education and myself met with Joe Fisher, at Springfield to elicit his assistance in identifying sources for transition funds. Mr. Fisher was very supportive and we anticipate continued assistance from his office.

Also, largely through the facilitative efforts of Ann Rosewater of Congressman Miller's staff, Dr. Mahan is engaged in a dialogue with Gary McDaniels and others at the Federal Office of Special Education concerning available discretionary funds for transition programming.

All of us engaged in this work appreciate your continued strong leadership as Chair of the Subcommittee on Select Education and your evident concern for the complex and persistent problems which relate to the disproportional placement of minority children in classes for the Educationally Mentally Handicapped.

You and your staff may find the attached article on "label-swapping" of interest.

Sincerely,

Joan First

Joan First, Specialist

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ETHNIC PROPORTIONS IN CLASSES FOR THE LEARNING DISABLED: ISSUES IN NONBIASED ASSESSMENT[1]

James A. Tucker, Ph.D.
Educational Directions Incorporated
Austin, Texas

Data from a large racially representative sample of school children show that the trend toward placing minority students into special education classes in disproportionate numbers has been complicated by the introduction of the learning-disability (LD) category. While the proportion of blacks in classes for the mentally retarded has decreased with the recent emphasis on protection in evaluation, the increased proportion of blacks in LD classes has been so great that the result has been an increasingly disproportionate number of blacks in special education classes overall. This is in spite of national efforts to the contrary.

There is little question that the learning-disabilities (LD) movement has enjoyed a phenomenal growth since its inception in the early 1960s. There is considerable question, however, whether the LD category has provided a manageable way of dealing with the types of school problems assigned to it. This paper will explore several problems associated with the assignment of children to LD classes, not the least of which is the problem of racial discrimination. To set the stage, a brief historic introduction is presented.

On April 6, 1963, Dr. Samuel Kirk spoke to a conference sponsored by the Fund for Perceptually Handicapped Children, Inc. In his speech Dr. Kirk condemned the practice of assigning labels to handicapping conditions. He further introduced the term "learning disabilities" to describe learning difficulties encountered by children who seemed otherwise nonhandicapped. Apparently those in attendance missed his point, because they used Kirk's new term to organize themselves *that very evening* into the Association for Children with Learning Disabilities ACLD (Wiederholt, 1974).

Now, little more than a decade later, it seems ironic that a category designed for certain pseudo handicapping conditions has become the most commonly assigned designation in special education. Figure 1 shows that in one state the percentage of children in special education designated as LD rose to almost 44% between the years 1970 and 1977. Figure 1 also shows the percentage of the general school population designated as LD during the same time period. One indicator that this increase is cause for concern is that Congress initially placed a funding ceiling on the appropriations to states to aid them in serving

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[1] This paper was presented at the meeting of Council for Exceptional Children, Kansas City, Missouri, May 1978.

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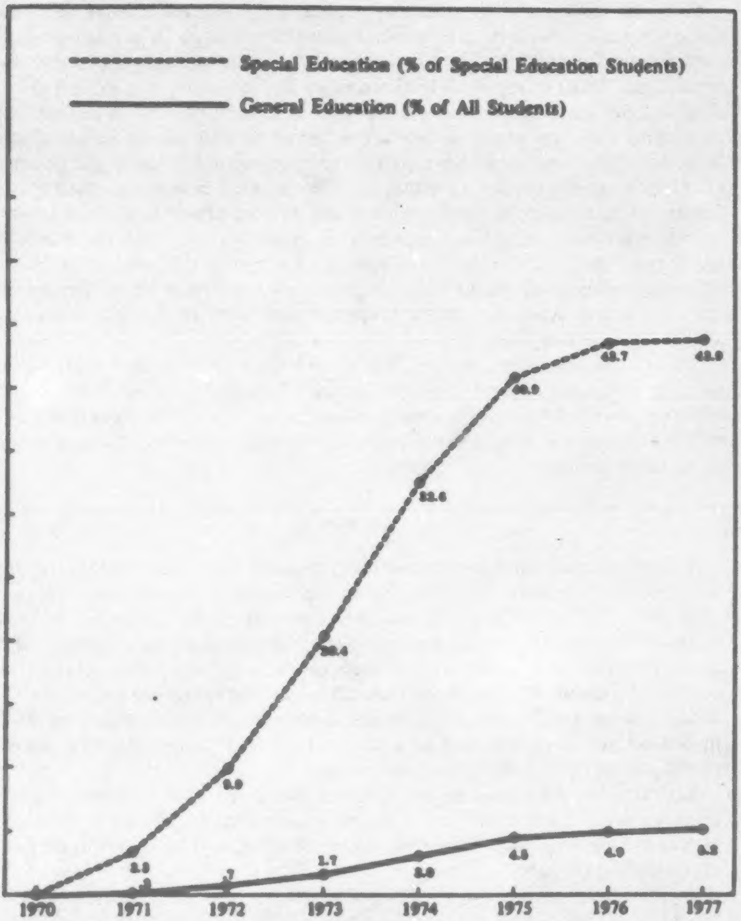

Figure 1. **Percentage of the total student population and the special education population classified as LD 1970–77.**

their identified handicapped. The limitation imposed by Congress stated that no more than 2% of the total student population (or approximately 16.33% of the special education population) can be counted toward federal appropriations for a given state. So it has become apparent in a very short period of time that the number of children being classified as LD has exceeded expectations.

Since the LD category has been as popular for dominant-culture pupils as for minority-group children, is it possible that the presence of the category could contribute to a continuation of the type of discrimination seen in the mental retardation (MR) category? This becomes a key question, and a careful look at data will demonstrate what has happened in some instances. Since both dominant- and minority-group pupils are referred to and placed in LD classes in large numbers, and since there is an accompanying reduction in the percentage of minority-group students making up MR classes, it is often asserted that educators are making great strides toward bringing an ethnic and racial balance to special education programs. However, it could well be that the burgeoning number of pupils from the dominant-culture group that are being placed in LD classes effectively masks a significantly greater increase in the percentage of minority-group students placed in special education rather than reducing an already inequitable situation.

This paper poses the question: Has there been a trend toward more equitable racial and cultural representation in special education since the inception of the LD category? The data will clearly indicate that the LD designation has provided a convenient alternative placement for disproportionately large numbers of minority students.

METHOD

A representative sample of school districts in the Southwest having a representative mix of dominant- and minority-group students was studied over a period of 8 years (1970–1977) during the development of the LD program in those districts. Because of possible repercussions, the school districts will not be identified. It is sufficient to report that the total pupil population of all the districts combined exceeds 40,000. More than 50 school districts were included — large urban, suburban, smaller cities, towns, and sparsely populated. The findings presented are intended only as a preliminary look at the question posed for consideration; other studies are encouraged.

Basically, the data used in the study included the total number of pupils in both general education and special education, by racial group (black, Mexican-American, and "other" — mostly Anglo), and by handicapping condition assigned (Figure 2).

RESULTS

Question 1: To what extent has there been an increase in the percentage of the total school population enrolled in special education classes over the 8-year period 1970–77?

During the 8 years of the study there was a rapid growth in special education programs in the districts (Figure 3). The first question to ask is to what extent was this growth proportionate for the three major racial groups.

Year	Placement	Black	Mexican-American	Anglo
1970	Reg. Ed.			
	Spec. Ed.			
1971	Reg. Ed.			
	Spec. Ed			
1972	Reg. Ed			
	Spec. Ed.			
1973	Reg. Ed.			
	Spec. Ed.			
1974	Reg. Ed.			
	Spec. Ed.			
1975	Reg. Ed.			
	Spec. Ed.			
1976	Reg. Ed.			
	Spec. Ed.			
1977	Reg. Ed.			
	Spec. Ed.			

Figure 2. Format for the data collected. In the cells are placed the number of students in general education and special education by year and by handicapping condition assigned (either LD or MR).

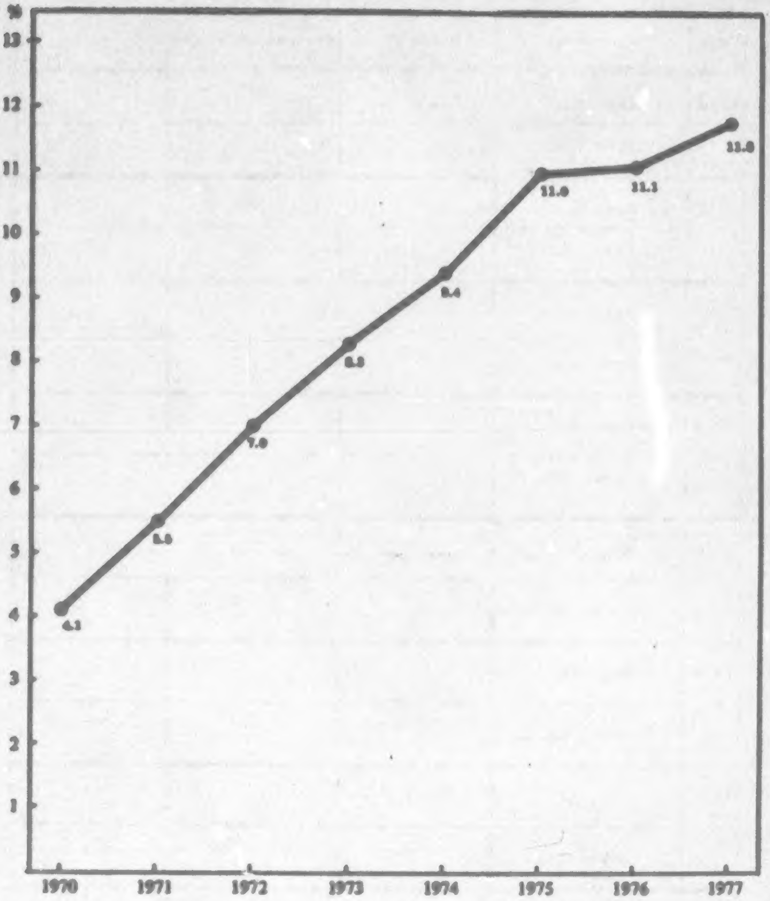

Figure 3. **Percentage of total school population in special education classes 1970–77.**

Question 2: To what extent are there differences in the percentages of total public school population from three racial groups enrolled in special education?

Figure 4 breaks this 8-year growth into its three racial components. There is nothing surprising here because the three racial groups are represented in the population in the same order and in approximately the same proportions as they are in the total school populations. But there are factors that are apparent

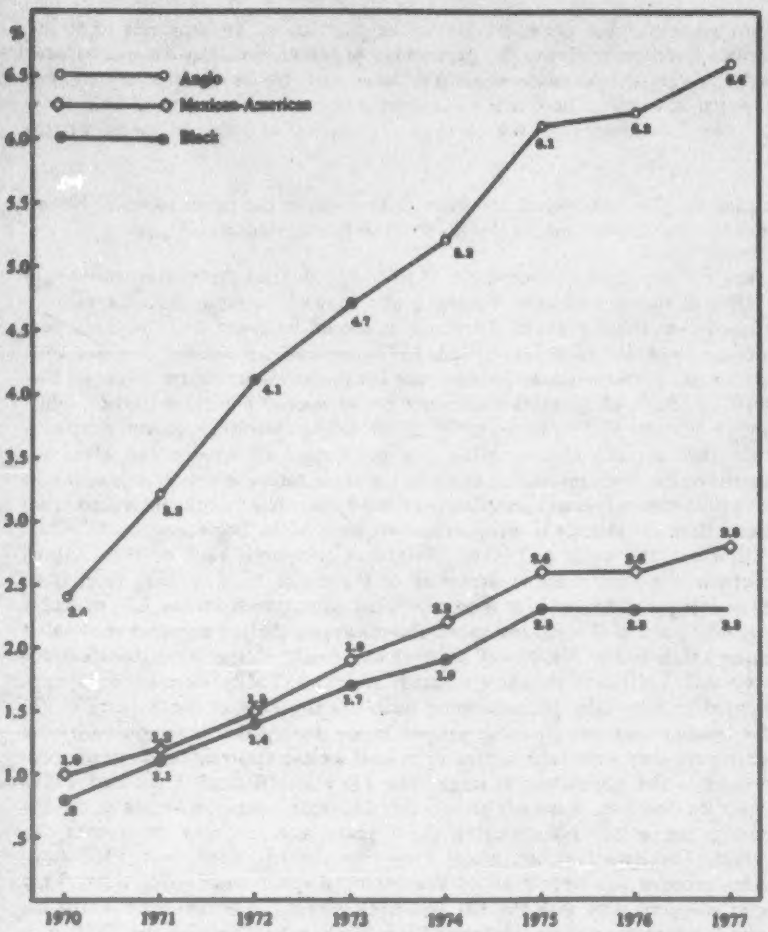

Figure 4. Percentage of total school population accounted for by each major ethnic and racial group in special education 1970–77.

only on closer examination. For example, what are the chances of a black child's being in special education classes compared with Mexican-American and Anglo children? Has this factor changed over time?

Since there are so many more Anglos than blacks and Mexican-Americans in the population studied, it is difficult to observe subtle but significant placement patterns without controlling for population differences. A simple way to control for such differences is to compare on the basis of percentage; that is, to compare the number per every 100 in the population. An issue related to the previous question relates to the percentage of blacks, Mexican-Americans, and Anglos in special education classes (i.e., how many blacks out of every 100 are in special education, how many Mexican-Americans out of every 100, etc.). This, of course, addresses the comparative chances of being in special education.

Question 3: To what extent are there differences in the percentages of blacks, Mexican-Americans, and Anglos involved in special education?

Figure 5 depicts the percentages of all black, Mexican-American, and Anglo students in special education classes; it also shows how these percentages have changed over the 8 years of the study. It should be noted that the three percentages given for each year (1970–1977) are not cumulative; they are each separate proportions shown side by side for comparison. Figure 5 reveals that by 1977, 15.2% of all black students were in special education classes, while only 11.1% and 11.5%, respectively, of all Anglo and Mexican-American students were in such classes. While the percentage of Anglos and Mexican-Americans has been increasing at about the same rate, the percentage of blacks being placed into special education over the 8 years has steadily increased from a point that was already disproportionately high in the beginning.

Elsewhere the author (Tucker, Note) has compared each of these ethnic groups in the same manner across all of the major handicapping categories. Three categories account for most of special education students: LD, educably mentally retarded (EMR), and speech handicapped (SH). The paper shows that students classified as SH, as well as those in virtually all the other classifications except LD, EMR, and trainable mentally retarded (TMR), were either (a) represented in ethnically proportionate numbers throughout the 8 years or (b) have become increasingly more proportionate during that time so that by the eighth year they were represented in at least a close approximation to the proportions in the population at large. The LD and MR (both EMR and TMR) categories, however, have not shown this desirable condition — not in the beginning, not at any point during the 8 years, and not as a trend over the 8 years. The data (Tucker, Note) show that the LD, EMR, and TMR categories account for nearly all of the ethnic disproportion over time. This paper will deal only with the LD and EMR categories because the TMRs account for such a small percentage of the students and because the TMR data reflect somewhat the same trend as do the EMR data, only to a lesser extent (i.e., it is a more stable category in that it more closely represents the ethnic proportions of the general population).

Question 4: To what extent are there differences in the number (percentage) of public school population classified as LD and EMR?

Figure 6 shows the annual growth (or change) in the overall percentages of students in LD and EMR classes. The LD curve, the same as in Figure 1, is presented again here to show its relationship to the annual changes in the EMR

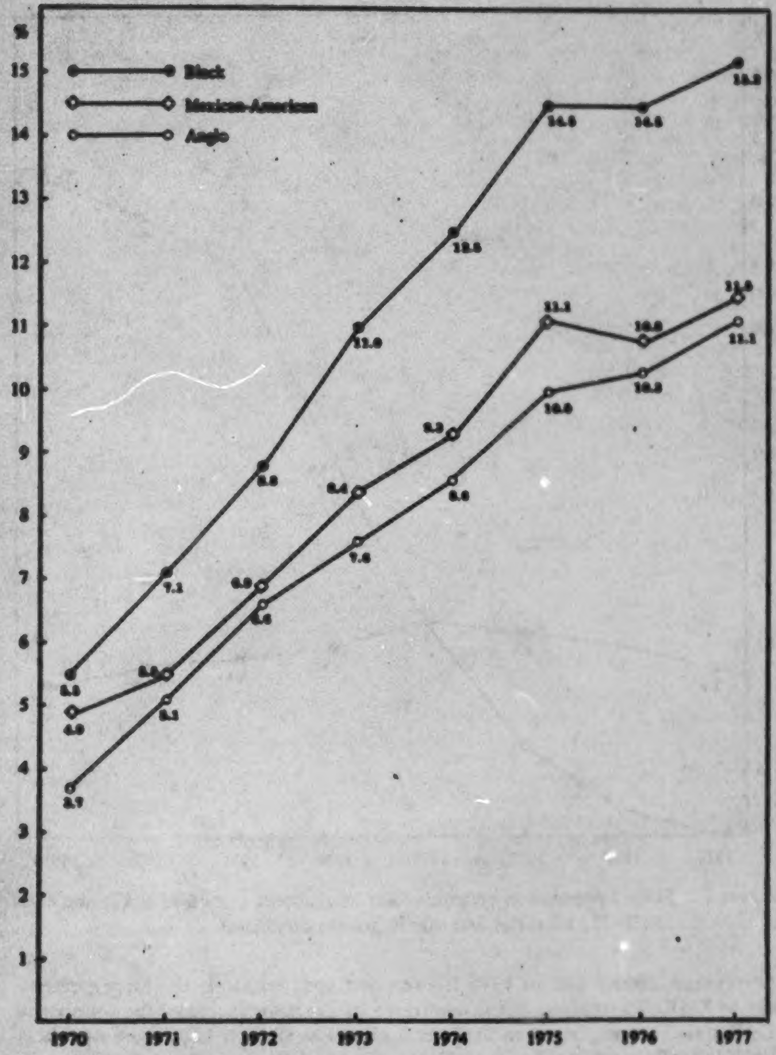

Figure 3. Percentage of each ethnic and racial group in special education 1970–77.

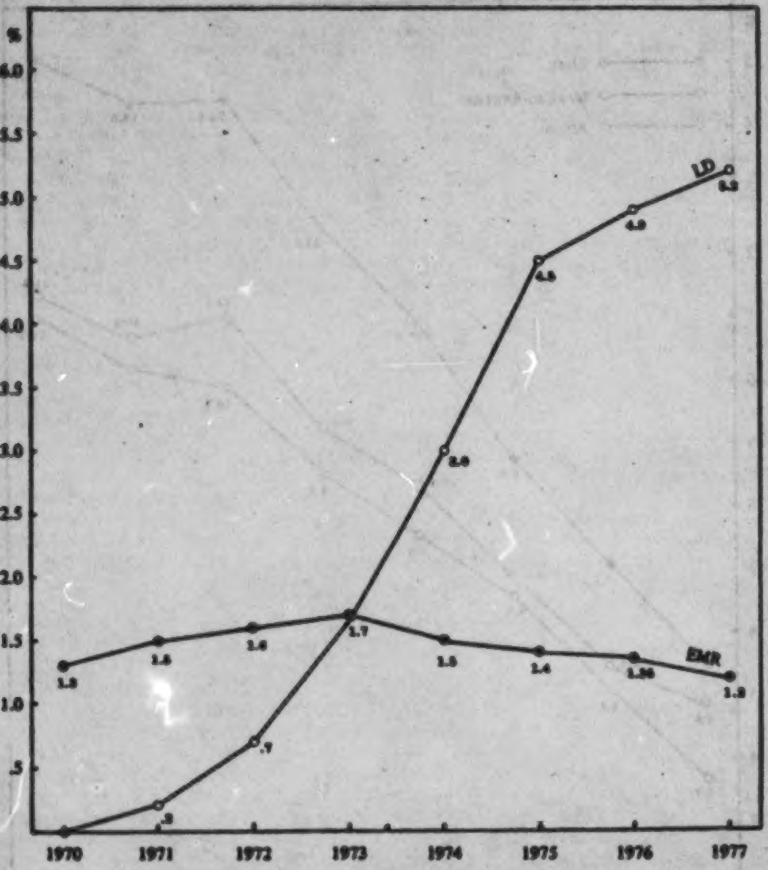

Figure 6. School population accounted for by students classified as LD and EMR 1970–77; all racial and ethnic groups combined.

percentage. Notice that in 1973 LD reached approximately the same percentage as EMR. Thereafter, as LD continued its dramatic increase, the number of EMR classifications began to drop. It is almost as though LD picked up where EMR left off. However, because the issue is racial discrimination, it will be necessary to take each of the lines on Figure 6 and separate out the groups to determine whether this idea is supported.

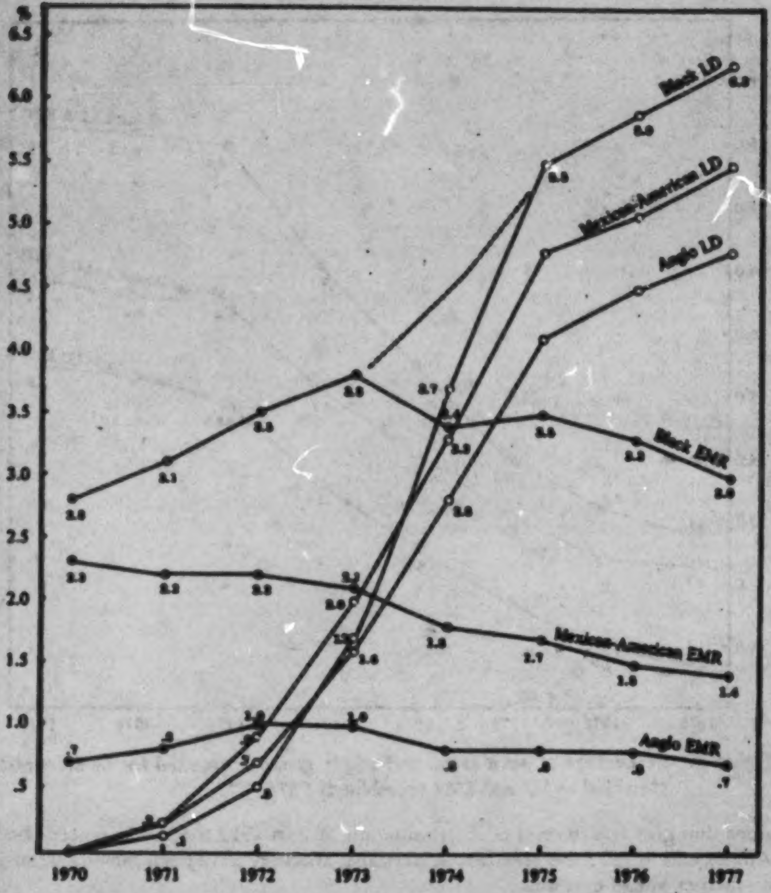

Figure 7. Percentage of each racial and ethnic group accounted for by students classified as LD and EMR 1970–77.

Question 5: To what extent are black, Anglo, and Mexican-American students labeled LD as opposed to EMR? Or, to what extent has there been an increase in LD proportional to a decrease in EMR?

Figure 7 shows the same data as those shown in Figure 6, but it separates the three racial and ethnic groups. Notice that the LD growth curve began in 1970 and grew rapidly to 1975, when a slight decrease occurred. Note also that at first the blacks were showing the reverse trend of the traditional overinclu-

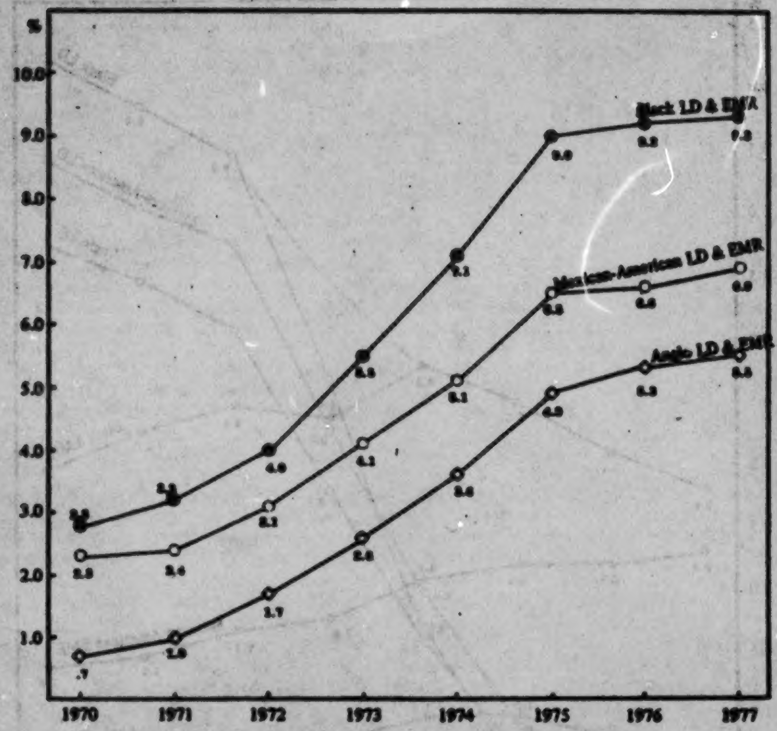

Figure 8. **Percentage of each racial and ethnic group accounted for by students classified as LD and EMR (combined) 1970–77.**

sions that give rise to cries of discrimination. But in 1972 the blacks passed the Anglos and in 1973 the Mexican- Americans; and they have been moving steadily farther ahead ever since.

The EMR lines are dramatic in their separation. Blacks are highly overrepresented relative to the Mexican-American and Anglo percentages. In 1970, 2.8% of blacks were classified EMR; it grew to 3.8% by 1973, after which it has fallen steadily, though not dramatically, to the 1977 level of 3% (still higher than it started, however). The three lines should be virtually overlapping for equivalence to exist. But the line for Anglos is significantly lower ($p < .001$), and though a slight increase occurred at the same time the blacks were increasing, the level has returned to virtually the same percentage it was in 1970.

On Figure 7 a series of dashes has been arbitrarily added from the peak of the black EMR line to the shoulder of the black LD line. The dashes extend the EMR line as though the growth to that point had continued. It does not take much imagination to infer that there is at least the possibility that when it was no longer socially desirable to place black students in EMR classes, it became convenient to place them in the newly provided LD category. It took about a year to make the changeover, but the resultant proportional differences were maintained.

Question 6: To what extent has there been an increase in the proportion of black, Anglo, and Mexican-American students labeled EMR and/or LD?

To make the point more graphic, Figure 8 combines the lines for LD and EMR by racial and ethnic group. The traditional accusation of racial discrimination cannot be refuted on the basis of these data. In fact, since 1970 the disproportion of minority students in LD and EMR classes (combined) has remained virtually the same for Mexican-Americans relative to Anglos but has steadily increased for blacks. This is in spite of a reduced number of blacks in EMR classes since 1973, when there was a rash of nondiscrimination legislation and influence both nationally and by individual states.

DISCUSSION

What is the appeal of the LD category? Why has it been so readily grasped by so many? Much has been written on the subject, and a number of explanations could be put forth. On the one hand, some feel that there is a clinically identifiable condition called LD; on the other, some feel that the category represents a sociopolitical search for special assistance by the dominant middle class, whose children were not being served by traditional special education categories. Whatever, the LD category may have set the stage for a subtle form of discrimination more widespread than that associated with the MR classification (Mercer, 1973; Mercer & Richardson, 1975). Is it possible that the growth and popularity of the LD movement found support in the concurrent development of civil rights issues — issues that made it increasingly less desirable to identify a child as MR if he/she is culturally or racially different from the dominant culture?

LD provides an alternate placement for children not succeeding in general education. It is no secret that prior to this category such pupils were often referred to special education and found their way into MR classes. This was especially true for children from ethnic minority groups (Mercer, 1973), which is one of the reasons for the strong social movement toward a more ethnically balanced representation of pupils in special education classes. Is it an accident that at about the same time the civil rights movement began to emphasize the moral ills associated with inappropriate placement of minority students in MR classes that the LD category was waiting in the wings ready to receive these very students — under a new guise, but for the same reasons? If so, then the resulting discrimination (that was so obvious with the socially stigmatizing MR classification) is not so obvious under the new guise because of the popularity of the LD category. Indeed, it is almost a status symbol in some circles.

As a result, little concern is expressed that LD can provide an excuse for a lower quality of schooling. For example, when children begin to have problems in school today, the chances are much greater that they will be referred to special education because of this added category and because of increased emphasis on finding the "handicapped." If the problems are readily identifiable by clinically observable symptoms, the child will be placed easily, and an appropriate educational program will be provided. But more often, the symptoms are not so apparent, and a handicapping condition is inferred to provide an explanation for why the child is not succeeding. Now that there is a LD category, often with extremely ambiguous and diffuse eligibility requirements, the chances are great that the aberrant learner will be screened quickly into an LD class rather than viewed in terms of what remedial experiences might be provided in the regular setting (Smith, 1968). Thus, the LD placement is often the easiest alternative for a school, even when there is no clear indication of a handicapping condition. In this way, it is contended, a student's problem is at least temporarily alleviated in that the school has "done something" for the child. Actually, of course, the school may have alleviated its own internal stress without helping the child at all. Placement in a convenient LD class effectively removes much of the responsibility of general education for a child's problem, and with the lowered expectations that come with special class placement there is often significantly less progress (Ross, 1976).

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FIELD HEARINGS ON THE EDUCATION FOR ALL HANDICAPPED CHILDREN ACT

FRIDAY, JUNE 27, 1980

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON SELECT EDUCATION,
COMMITTEE ON EDUCATION AND LABOR,
Aurora, Colo.

The subcommittee met, pursuant to notice, at 9:25 a.m. at the First Creek School for Retarded Children, 1523 Boston Avenue, Aurora, Colo., Hon. Paul Simon (chairman of the subcommittee) presiding.

Members present: Representatives Simon and Kramer.

Staff present: Judith Wagner, staff director; Dianna Cregger, executive secretary; Jane Baird, legislative assistant; and Terri Sneider, minority legislative staff assistant.

Mr. SIMON. The subcommittee will come to order. It's a pleasure to be here in Aurora, Colo., for a hearing of our subcommittee on Public Law 94-142 and section 504. I want to add that we are here at the invitation of a member of our subcommittee. Congressman Ken Kramer, a freshman Member of Congress. He's been a hard working, diligent member of this subcommittee, and those of us on the subcommittee of both political parties appreciate the contribution that he has made to our subcommittee.

Let me just add two other comments before I yield to my colleague and then hear from our witnesses. We will inevitably in the course of these hearings be focusing on what needs to be done—the problems Colorado is experiencing in complying with the mandates of the law. I think it is important that we keep in mind as we view the problems the tremendous strides that have been made—there is much that is positive.

Keep in mind, for those of you who may not have background in this area—you may represent school districts or others who are searching for answers—what a substantially solid investment in the future this is. We had an illustration perhaps 2 months ago in testimony before our subcommittee in the State of Arkansas that a young man was rehabilitated through an educational and vocational rehabilitation program. He has become a physician. He has now paid more in taxes than the entire vocational rehabilitation program in Arkansas cost for the first 20 years of its existence. So we're talking about something that is not simply a humanitarian gesture. We're talking about something that is a very substantial investment in our own economic future.

I would like to yield to my colleague from Colorado. Welcome to Colorado, Ken.

Mr. Kramer. Thanks for your cooperation, Mr. Chairman, in allowing these hearings to take place in the Fifth Congressional District. They are part of a broad, sweeping review of the operation, impact, and effect of Public Law 94–142, which is a monumental piece of legislation that our committee will be reauthorizing in the not too distant future. We want to hear not only the good things about it, but also those ways in which we can change this law to make it more effective and more cost efficient so that we can do the best possible job that we can, while at the same time making sure that the taxpayers' dollars are as well spent as possible.

Your contribution to this process is certainly appreciated. I'm a newcomer to it. You've been at it for many, many years and are responsible for making life for our handicapped citizens a lot more pleasurable and beneficial throughout our country.

We're also going to have some comments on the operation of section 504 of the Rehabilitation Act of 1973. We want to find out how it is working, and how it also can be improved. So we welcome you to Colorado, and appreciate your bringing the subcommittee out here to hear this important testimony.

It's our understanding that our first panel of witnesses will be Jim Mills, president of the Colorado Education Association; Mike Brown, who is past executive director of the Colorado Association for Retarded Citizens; Russ DeWitt from the Colorado Association for Children with Learning Disabilities; and Bruce Bernstein, who is from the Legal Center for Handicapped Children.

For the benefit of these witnesses and others who will follow, it will be appreciated if, due to the time constraints we're working under that to the extent possible, if you could summarize your written statements. Certainly your written statements will be totally included in the record and will be part of the consideration process that we utilize in helping us to work with improving and changing this legislation.

Without any further ado, Mr. Chairman, I will turn the proceedings back to you.

Mr. Simon. We'll call our first panel. We will proceed by calling on all panel members in each panel and then we'll proceed with questions.

Our first panel, as Mr. Kramer has indicated, Russ DeWitt and Bruce Bernstein.

Russ DeWitt is the president of the Colorado Association for Children with Learning Disabilities.

STATEMENT OF RUSS DeWITT, PRESIDENT, COLORADO ASSOCIATION FOR CHILDREN WITH LEARNING DISABILITIES

Mr. DeWitt. Thank you, Mr. Chairman. With me is Janet Rountree who is also a member of the Colorado Association for Children with Learning Disabilities. We will be combining our testimony today.

We're representing the Colorado Association of Children and Adults with Learning Disabilities. We would like to thank you for your continued support of the education for all handicapped children. The benefits of Public Law 94–142 have, of course, been monumental and more far-reaching than any of us ever hoped for in such a few years. However, we can never sit back and only praise ourselves for a job well done if we are to continue to grow.

At all levels, Federal, State, and local, change in commitments to the exceptional students must still take place. Many schools are still educating our children to live and function in yesterday's world, not the future to reach each new day. More creativity and innovation must be utilized if we are to truly educate rather than placate.

If we fail to educate our handicapped now through special education, we will pay for them later at an accelerated and inflationary rate through welfare and other social programs. We must continue to refine our educational processes to fit the programs to the student, not the student to the programs; to teach a child, not a curriculum.

Learning disabilities has many definitions. If you were to ask 10 teachers what it means to have a learning disability, you would get 10 different answers. Our children do not walk with braces, they don't have hearing aids, and they aren't in wheelchairs. Our learning disabled students look like any other student, but without special help, they may become as debilitated as any of the more severely handicapped and readily recognized.

They may be referred to as the dirty handicap, the fatal handicap, or the lazy student. A learning disability in and of itself is not considered either a physical or mental disability, although it is a definite barrier to the traditional learning process. Learning disabilities are very complex and may deal with input of information, organization of thought and speech, auditory association, decoding, small and large motor control, or many of the other processes of the brain in one or more combinations.

The concept of educating the handicapped has been accepted with but few exceptions; however, what still concerns many parents of learning disabled are the many learning disability students who continue to fall through the cracks; who do not fit the generally accepted concept of handicapped. Should we always put the more severely handicapped first for services because they're more easily identified and whose fullest potential may be only a small degree of life skills, or should we recognize a learning disability for the handicap it is rather than how many years a student is behind in a particular area before they can be placed in a special education and eventually become a responsible taxpaying citizen?

Many learning disabled students' ability to survive in schools is directly related to their regular education teacher's understanding of the students' unusual needs because the school does not recognize the escalating problems which will face the student with learning disabilities every day.

Weekly, our association gets calls from parents whose child does not qualify for a special education program because they are not far enough behind or the school has reached its limit for the learning disability category or all special education students. Many students are not being assessed for many months after referral because teachers and psychologists are so overloaded. We don't know the answer to this problem, but we do know that children deserve a chance to succeed.

The existing programs may be fulfilled for two possible reasons; one, too many children with real learning disabilities for the number of slots available, or the fact that learning disabilities has been used as a dumping ground for those students who are a problem in the regular education classroom and the teacher does not know how to handle them.

There are too many students in learning disability classes who should not be there. They have been placed there inappropriately instead of in the limited intellectual capacity classes or slow learner category because it is more socially acceptable to be learning disabled, or they aren't being staffed out when they're ready for mainstreaming because the regular classroom teachers are not prepared to teach them.

Education is defined as that which provided each individual student with a system of development to be self-supporting. That is what we are asking for: a self-supporting education.

The same special attention that is often paid to the regular student and made him a winner will make a self-supporting and self-respecting student the learning-disabled student.

The child-find concept of Public Law 94–142, section 613(2)(C) of the Colorado Annual Program Plan, is notable, and we concur with it. However, we also see many of the same students, once found with no special education program because of the aforementioned problems of placement. If the child count goes up, it should automatically mean a corresponding increase in annual authorization of funding. Many districts prioritize needs and will continue to do so unless they realize the full funding of Public Law 94–142 as authorized.

Again, we feel accountability at the local level is possible only with full implemention of the act. The gaps which exist in current funding and full funding are substantial. However, what price do we put on full potential which, with the learning-disabled student with few exceptions when taught at their learning rate and style in the appropriate setting, has no limit? Special eduaction should be seen as providing a qualitative individual, not a quantitative number of graduates.

Our Colorado Association for Children and Adults with Learning Disabilities feels that successful implemention requires the following things: continuing need to expand the knowledge and skills of regular educators and principals. They must be sensitized to the special education student. We should begin selecting those teachers with insight and communication skills and the ability to teach an individual need of the exceptional student as well as the gifted and talented student. We also must have special education teachers trained to work with as support and consultation for the regular education teachers who have handicapped students in the mainstream.

It is our hope that Congress will continue its interest and sensitivity to the personal inservice training of the regular education teacher to provide the tools they need in the day-to-day education of the exceptional student in the mainstream.

Higher education institutes are not changing teaching techniques as quickly as we hoped since November of 1975 when Public Law 94–142 was enacted. A minimum amount of hours, 6, are required of regular education teachers being certified. Very little hands-on experience with the handicapped student is available before entering the actual classroom. Public Law 94–142 mandates individualization; teacher certification does not. This oversight must be corrected.

The special education personnel coming from our higher education institutes begin teaching with a minimum knowledge of how to write an individual education plan, what an individual education plan is, and what it is not. In our opinion, the IEP is one of the most if not the most important aspects of the education of the handicapped, and parents are more often than not not included in the writing of the IEP. Many teachers do not understand how the evaluation and writing of IEP's is done and continue to do it incorrectly. Many teachers do not understand the IEP is not an accountability contract and feel very pressured by it.

According to the act, the IEP is not a performance contract, but this does not relieve agencies, teachers, and districts from making good-faith efforts in assisting the child in achieving the goals and objectives of the IEP. Therefore, we feel that inservice is vital for the regular education and special education teachers on an ongoing basis.

Vocational and career education is extremely important for the learning-disabled student. Learning disabilities can have an extremely adverse effect on a person's ability to work if not properly educated and trained. It takes skill and understanding of the learning-disabled students' unique problems to help them overcome their particular disability. It can be done.

Severe learning-disabled students when they reach adulthood can be as productive as anyone, a tax-paying, responsible citizen, if they get the services they need. Vocational and career education teachers are not participating in the writing of most secondary students' IEPs. In fact, little communication is going on between the learning-disabled student, regular educator, special educators, and vocation teachers because they have not been provided the necessary preservice or inservice training to work collectively, and each feels he must remain in his solitary domain.

We ask then for the adequate assistance to individual States and institutions of higher education for the in-depth training of sufficient quality, not quantity, special education, vocational career education, and regular education teachers. Many vocational education teachers are not training our youth to fit into today's job market. This is also an area of concern.

It has been stated that as many as 50 percent of all intelligence development occurs before the age of 4. With appropriate early intervention for the learning-disabled student, it will substantially increase the student's choices and chances of reaching full potential.

Unlike the retarded, slow learner, or other categories of lower-than-normal intelligence quotient, handicapped students, the learning-disabled student may only need to expand visual perception skills, auditory functioning levels, raise decoding skills, et cetera, through a 1-hour-a-day lab class, speech-language therapy several times a week, and sometimes with a basic change in the regular classroom setting such as the use of larger print, tape recorders for the older or secondary student attending lectures, adapting instruction to accommodate the low reading level, et cetera. These things will insure a high level of competency and success for the learning disabled. A commitment to education of the learning-disabled student should not be viewed as a burden upon our schools or State but rather a cost-effective investment in the future.

The U.S. Office of Gifted and Talented recently agreed with the studies of the National Association for Children and Adults with Learning Disabilities that many of the children who are considered learning disabled are also gifted. They are the deviant and divergent thinkers. They are often extremely curious and therefore labeled hyperactive. Many learning-disability students have very high IQ's, but because of poor visual perception or other disabilities, they read several years below grade level. Since most of the traditional learning is done through reading, they begin falling behind. With remediation in a special education class several times a week, they begin functioning at grade level and eventually become productive citizens.

But take the same student with a high IQ, possibly in the gifted and talented category, with poor reading skills and no identification as learning disabled and thus no remediation. By junior or senior high school, he has a poor self-concept, and he can't compete with his peers. He turns to other ways of filling time and raising his self-worth. Involvement in drugs, petty crimes, may seem like the only way to impress friends. He becomes a dropout and is soon caught for joyriding in a stolen vehicle to show off for his friends leaving school that day. A fictitious example? Yes and no. Many of the juvenile delinquent centers concur with our example time and again.

Adjudication is costing our State about three times what it costs for special education per student. Cost effectiveness at school age level is most desirable with the increasing number of welfare and food stamp recipients. No cost projection can even be guessed at between the contributor who might have been and the motivated self-supported.

In closing, we ask: Are we to educate the handicapped or educate in spite of a handicap? We choose the latter and hope you agree; Public Law 94–142 mandates a free, appropriate education for all handicapped students. We feel we must educate the students so they may become productive, successful, and happy members of our society. The onus is on each of us to continue to make the gains begun with the passage of Public Law 94–142. The 1980's must be a time when these gains are to be continued. To be complacent and to sit on our gains is to backslide and not help those students whose destiny is in our hands. Thank you.

Mr. SIMON. Thank you very much.

[Prepared statement of Russell DeWitt follows:]

PREPARED STATEMENT OF RUSSELL DEWITT, PRESIDENT, COLORADO ASSOCIATION FOR CHILDREN AND ADULTS WITH LEARNING DISABILITIES; AND JANET ROUNTREE, PARENT

Mr Chairman and Members of the Select SubCommittee:

I am Russell DeWitt and I'm representing the Colorado Association of Children and Adults with Learning Disabilities. We would like to thank you for your continued support of the Education for All Handicapped Children. The benefits of PL 94-142 have, of course, been monumental and more far reaching than any of us ever hoped for in such a few years.

However, we can never sit back and only praise ourselves for a job well done if we are to continue to grow. At all levels; federal, state and local, change in commitments to the exceptional student must still take place. Many schools are still educating our children to live and function in yesterdays world, not the future we reach each new day. More creativity and innovation must be utilised if we are to truly educate rather than placate. If we fail to educate our handicapped now through special education, we will pay for them later at an accelerated and inflationary rate through welfare and other social programs. We must continue to refine our educational processes to fit the program to the student, not the student to the program; to teach a child, not a curriculum.

Learning Disabilities has many definitions--if you were to ask ten educators what it means to have a learning disability, you would get ten different answers. Our children do not walk with braces, they don't have hearing aids, they aren't in wheel chairs. Our learning disabled students look like any other student, but without special help, they may become as debilitated ~~handicapped~~ as any of the more severely handicapped which are readily recognised as handicapped. They may be referred to as the "dirty handicap", the "fatal handicap", and often the "lazy" student. A learning disability in and of itself is not considered either a physical or mental disability although it is a definite barrier to the traditional learning process. Learning disabilities are very complex and may deal with input of information, organisation of thought and speech, auditory association, decoding, small and large motor control, or any of many other processes of the brain in one or more combinations.

The concept of educating the handicapped has been accepted with but few exceptions; however, what still concerns many parents of learning disabled are the many learning disability students who continue to fall between the cracks; who do not fit the generally accepted concept of "handicapped". Should we always put the more severely handicapped first for services because they're more easily identified, and whose fullest potential may be only a small degree of life skills, or should we recognise a learning disability for the handicap it is, rather than how many years a student is behind in a particular area before they can be placed in special education and eventually become a responsible tax-paying citizen. Many learning disabled students ability to survive in schools is directly related to their regular education teachers understanding of the students unusual needs because the school does not recognise the escalating problems which will face the student with learning disabilities every day.

Weekly, our Association gets calls from parents whose child does not "qualify" for a special-education program because they are not far enough behind or the school has reached it's limit for the learning disability category, or even for all special-education students. Many students are not being assessed for many months after referral because teachers are so overloaded. We don't know the answer to this problem but we do know these children deserve a chance to succeed. The existing programs may be filled for two possible reasons, (1) too many children with real learning disabilities for the number of slots available or (2) learning disabilities has been used as a "dumping ground" for those students who are a problem in the regular education classroom and the teacher does not know how to handle them. There are too many students in learning disability classes who shouldn't be there. They have been placed there inappropriately instead of in the limited intellectual or slow learner category because it is more acceptable to be learning disabled, or they aren't being staffed out when they are ready for mainstreaming because the classroom teachers are not prepared to teach them.

Education is defined as that which provided each individual student with a system of development to be self supporting. That is what we are asking for; a self supporting education.

The same special attention that is often paid to the regular student and made him a "winner", will make a self supporting and self respecting student of the learning disabled student.

The child-find concept of PL 94-142 (Section 613 (2)(C) of the Colorado Annual Program Plan) is notable; we concur with it. However, we also see many of those same students once found, with no special education program because of aforementioned problems of placement. If child count goes up, it should automatically mean a corresponding increase in annual authorization of funding. Many districts priortise needs and will continue to do so unless they realize the full funding of PL 94-142 as authorized.

Again, we feel accountability at the local level is possible only with full implementation of The Act. The gaps which exist in current funding and full funding are substantial; however, what price do we put on full potential, which with the learning disabled student, with very few exceptions, when taught at their learning rate and style in the appropriate setting has no limit. Special education should be seen as providing a qualitative individual, not a quantitative number of graduates.

Our Colorado Association for Children and Adults with Learning Disabilities feels that successful implementation requires:

(1.) Continuing need to expand the knowledge and skills of regular educators and principals. They must be sensitized to the special education student. We should begin selecting those teachers with insight and communication skills and the ability to teach to an individual need of the exceptional student as well as the gifted and talented student. We also must have special education teachers trained to work with and as support and consultation for regular education teachers who have handicapped students who are mainstreamed.

It is our hope that Congress will continue it's interest and sensitivity to the personnel in-service training of regular education teachers to provide the tools they need in the day-to-day education of the exceptional student who is mainstreamed.

(2.) Higher education institutions are not changing teaching techniques as quickly as was hoped since November 1975 when PL 94-142 was enacted. A minimum amount of hours, six are required of regular education teachers being certified. Very little "hands-on" experience with the handicapped student is available before entering the actual classroom. 94-142 mandates individualization, teacher certification does not--this oversight must be corrected. The special education personnel coming from our higher education institutes begin teaching with a minimum knowledge of how to write an individual education plan; what an individual education plan is and what it is not. In our opinion, the I.E.P. is one of the most, if not the most important aspects of the Education of the Handicapped, an d parents are more often than not, not included in the writing of the Plan. Many teachers do not understand how the evaluation and writing of the I.E.P. is done and continue to do it incorrectly. Many teachers do not understand the I.E.P. is not an accountability contract, and feel very pressured by it. According to The Act (121a-349) the I.E.P. is not a performance contract, but this does not relieve agencies, teachers and districts from making good faith efforts in assisting the child in achieving the goals and objectives of the I.E.P. Therefore, we feel that in-service is vital for the regular education and special education teachers on an on-going basis.

(3.) Vocational and career education is extremely important for the learning disabled student. Learning disabilities can have an extremely adverse affect on a persons ability to work if not properly educated and trained. It takes skill and understanding of the learning disabled students unique problems to help them overcome

Reference 121a-349 "Individualized education program-accountability. Each public agency must provide special education and related services to a handicapped child in accordance with an individualized education program. However, Part B of the Act does not require that any agency, teacher, or other person be held accountable if a child does not achieve the growth projected in the annual goals and objectives."

their particular disability--it can be done. Severe learning disabled students when they reach adulthood can be as productive as anyone; a tax-paying responsible citizen, if they get the services they need. Vocational and career education teachers are not participating in the writing of most secondary learning disability students I.E.P.s. In fact, little communication is going on between the learning disability students regular education, special education, and vocation teachers because they have not been provided the necessary preservice or inservice training to work collectively, and each feels he must remain in his solitary domain. We ask then for adequate assistance to individual states and institutions of higher learning for the indepth training of sufficient quality (not quantity) special education, vocational and career education, and regular education teachers. Many vocational educational teachers are not training our youth to fit into todays job markets. This is also an area of concern.

(4.) It has been stated (Bloom 1964) that as much as 50% of all intelligence development occurs prior to age 4. With appropriate early intervention for the learning disabled student, it will substantially increase that students choices and chances of reaching full potential. Unlike the retarded, slow learner, or other categories of lower than normal I.Q. handicapped students, the learning disabled student may only need to expand visual perception skills, raise auditory functioning levels, improve decoding skills, etc, through a one-hour a day lab class; speech and language therapy several times a week, and sometimes with a basic change in the regular classroom setting such as the use of larger print, tape recorders for the older or secondary student attending lectures, adapting instruction to accommodate the low level reading rate, etc. will insure a high level of competency and success for the learning disabled. A committment to education of the learning disabled student should not be viewed as a burden upon our schools or state, but rather a cost effective investment in the future.

(5.) The U.S. Office of Gifted and Talented recently agreed with the studies of the National Association for Children and Adults with Learning Disabilities that many of the children who are considered learning disabled are also gifted. They are the deviant and divergent thinkers; they often are extremely curious and therefore labeled hyperactive. Many learning disability students have very high I.Q.s, but because of poor visual perception or other disability, they read several years below grade level. Since most of the traditional learning is done through reading, they begin falling behind. With remediation in a special education class several times a week they soon begin functioning at grade level and eventually become productive citizens. But take the same student with a high I.Q., possibly in the gifted and talented category, with poor reading skills and no identification as learning disabled and thus no remediation. By Junior or Senior High School, he has poor self concept and he can't compete with his peers. He turns to other ways of filling time and raising self-worth. Involvement in drugs and petty crimes may seem like the only way to impress friends. He becomes a drop-out and is soon caught for joy-riding in a stolen vehicle to show off to his friends leaving school for the day. A ficticious example--yes and no, many of the juvenile delinquent centers concur with our example time-after time. Adjudication is costing our state about three times what it costs for special education per student. Cost effectiveness at school age level is most desirable with the ever increasing numbers of welfare and food stamp recipients. No cost projection can even be guessed at between the contributor who might-have-been, and the motivated self-supporter.

In closing, we ask--are we to educate the handicap or educate in spite of a handicap? We choose the latter and hope you agree. 94-142 mandates a free, appropriate education for all handicapped students. We feel we must educate the student so they may become productive, successful and happy members of our society. The onus is on each of us to continue to make the gains begun with the passage of 94-142. The 1980's must be a time when these gains are to be continued. To be complacent and sit on our gains is to backslide and not help those students whose destiny is in our hands.

Mr. SIMON. Mr. Bruce Bernstein of the Legal Center for Handicapped Citizens.

STATEMENT OF BRUCE BERNSTEIN, ATTORNEY, EXECUTIVE DIRECTOR, LEGAL CENTER FOR HANDICAPPED CITIZENS

Mr. BERNSTEIN. Thank you, Mr. Chairman, Mr. Kramer.

My name is Bruce Bernstein. I'm an attorney and executive director of the Legal Center for Handicapped Citizens. The legal center submitted to the subcommittee some extensive written comments. And rather than read them, I will try and summarize them in a reasonably brief fashion.

Mr. SIMON. Your written testimony will be entered into the record.

Mr. BERNSTEIN. Thank you.

The legal center itself is a nonprofit public interest law firm that has been intimately involved as advocates for handicapped people in Colorado since 1974 with particular expertise and experience in the area of the needs and special education of handicapped children by virtue of a variety of activities. We have acted as ad hoc advisers to the Colorado State Department of Education when it adopted the original State plan on Public Law 94-142. We have followed the progress of subsequent State plans carefully and have submitted detailed comments on each State plan since that time. When our comments were not acted upon at the State level, we pursued them to the national level.

In addition, we have represented more than 300 individual handicapped children in the last 3 years who, directly or indirectly, have come to the center and asked for assistance in staffing, due process appeals, and other matters dealing with special education. We've trained parents, advocates, and educators in their legal rights and responsibilities.

The legal center is a protection-of-advocacy system in Colorado for developmentally disabled citizens and, in addition, through other sources of funding represent other handicapped persons.

From our viewpoint, Public Law 94-142 has brought some very substantial gains to this State. Much remains undone, however. I'd like to talk a little bit about the gains and a little bit about the problems. It's important that the subcommittee understand that in Colorado before Public Law 94-142 came along, Colorado had a strong State law dealing with the rights of handicapped children. When coupled with section 504 of the Rehabilitation Act, most if not all of the rights provided under Public Law 94-142 were present. However, it seemed as if those right were constantly being swept under the rug and ignored until the hearings began to commence on the State plan regarding Public Law 94-142.

There was tremendous controversy surrounding the adoption of the plan when it was initially adopted in this State. Supporters of the plan saw that it was bringing forth new and exciting and innovative rights which, from our viewpoint, had always existed but never been implemented. Opponents saw impressive new burdens, which, in our viewpoint, were not true because those burdens had always existed.

The pleasure, the beauty of the controversy, was that the education of handicapped children came out of the closet, so to speak, and into the forefront. And as a result, a lot was done in this State to the benefit of handicapped children. That's why I say that Public Law 94–142, even though indirectly, has in fact brought substantial gains to this State.

In addition to the awakening of interest and enthusiasm, some of the gains revolve around the attitudinal issues. Three years ago when the State plan was first adopted, the kinds of cases coming to the center were cases in which schools were just flat refusing to discuss anything with parents, in which schools were just flat refusing to enroll certain types of handicapped students. With the oncoming of Public Law 94–142, a lot of those attitudes seem to have changed.

Schools are beginning to acknowledge their responsibility. They are beginning, even in some districts, to move with some vigor and some enthusiasm to implement not only the letter of the act but the spirit of the act.

There's a movement away from segregated schools. There's a movement toward acknowledging the parents, rather than a bothersome person who comes to the school, as an equal or at least someone who has some responsible input into the educational planning process.

There are a lot of problems remaining, and I'd like to talk about some that I see affecting this State and also the Nation and then specifically some that are clearly prevalent in this State and maybe in other States, too.

The first problem is clearly that of finances—Public Law 94–142 is supposed to supplement rather than replace finances. It's clear that in this State there is no dedication in the legislature to adequately fund special education programs for handicapped children. The State law basically provides for 80-percent reimbursement to the local education units from the State. That State law has never been fully funded. And basically, districts look to approximately 48 to 50 percent reimbursement from our State.

The district simply cannot meet their other goals and obligations and pressures and fulfill the mandate of section 504 and Public Law 94–142, with the available dollars. As a result, problems have arisen, and districts are in fact seeking loopholes in the law and indirectly refusing to serve.

The other problem, which is a much bigger problem, I think, and a much more difficult problem to address, is the interrelated systematic attitudinal problem. When the districts are faced with demands for services on handicapped children by laws that say they must provide these services and yet they get no corresponding funds, are obviously caught in a quandary. They have to strike out in self-defense. Sometimes they strike out by way of cutting services in subtle and indirect methods so the parents don't even realize what is going on until it's too late. They refuse to serve children in subtle ways by placing children or referring children for residential treatment or homebound tutors, because they simply don't have money to provide the needed programs.

This problem is reinforced, unfortunately, by the attitude of BEH and by the Colorado State Department of Education. Neither of these organizations have demonstrated by words or actions any firm, nononsense commitment to a standard of excellence in the delivery of services to handicapped children. Quite to the contrary, it seems to be the goal of BEH and State department of education to strive for paper minimal compliance with the law. If we've got it on paper, that's all we have to do.

In fact when we met with a representative from BEH last year regarding some concerns we had, very substantial concerns with the Colorado State plan—one of which is now in litigation and a copy of the complaint has been entered into the record—the concern of BEH was merely whether or not the written document sufficiently met the requirements of the law. It was clear that even the written document did not meet the requirements of the law. The written document was approved, and it's our anticipation it will be approved again this year.

This attitude of striving for mediocrity rather than excellence for paper compliance rather than real compliance has been clearly transmitted to local education agencies. They know that the State department of education, except on rare instances, and BEH, on even rarer instances if ever, will not interfere, will not come as a strong and unequivocal advocate to the paying of handicapped children.

We had our differences many times and still do in certain areas with the old U.S. Department of Health, Education, and Welfare, Office for Civil Rights. Handicapped children in this State have that Office as their resource to turn to in this area. Somehow, some way, that Office has apparently communicated to local education agencies and to the State department of education that it is interested in real compliance.

Complaints to OCR usually get results in this State. Complaints to the State department of education do not. In fact at least one district on a very major problem, a statewide problem, has been known to indicate that regardless of what the State department of education directed it to do as its responsibilities under the law, it would not and is not presently serving a group of institutionalized children. And this was reported to the State department of education, it was accepted apparently more as the norm than as the exception.

I'd like to talk now a little bit about some of the specific Colorado problems that I think Congress should know about and be concerned about. First, the plight of institutionalized children. Institutionalized children in this State—and by that I mean not only children who are in institutions such as the State home and training school but also children in some instances who are in nursing homes, foster care, and the like—are not in most instances receiving a free appropriate public education. We are not aware of a single institutionalized child in the sense of a child in, for example, the State home and training schools, of which there are three in this State, who does receive free appropriate education.

This problem was called to the attention of the State department of education and to BEH in May of 1979. BEH was more interested in paper compliance in the State plan than in the realities of life. There was no paper compliance in the State plan, but the plan was approved anyway. The State department of education's response to the problem was that they were unaware it existed, and they would look into it which in fact they did. Unfortunately, after looking into the problem, the State department of education took no effective action to resolve it.

As a result, included in this record is one very small segment of this problem, a copy of the complaint in the case of *Association for Retarded Citizens in Colorado* v. *Frazier* who is the Commissioner of Education in Colorado. And I'd like to tell you just a little bit about what that case is about.

The three State home and training schools in this State are located in different counties. The policy of local education agencies in those counties is that if the parents of those children do not live in that county, that child is not a resident of the county and should be served by the local education agency where the parent resides. When the parent goes to the local education agency where the parent resides, he's told, "Since your child lives in the county in which the institution is located, your child is not our responsibility and must go to that other district."

This absurd catch-22 situation was brought to the attention of the Colorado Department of Education with regard to four children in October–November of 1979. We're now in June. Not one of those four children has had a day in school. As a matter of fact, out of those four children, not one of those four children have ever had a day in school.

The State department of education was totally unable to resolve the problem. They saw one possible solution by way of legislation. When that legislation was introduced and analyzed and it was discovered that the legislation not only would not solve the problem but would compound it, amendments were suggested that would in fact resolve the problem. When the sponsor of the legislation indicated that in fact he was going to accept the amendments for other political reasons, namely the cost of the program, the State Department of Education requested that the bill be withdrawn, and in fact it was withdrawn.

None of these children are being educated. I don't know, frankly, how anyone concerned with the problems of Public Law 94–142 in the interest of handicapped children can read the complaint that's now in the record and not feel sickened that there is some substantial problem when children who are clearly, everyone agrees, of school age, are handicapped, and in need of special education, because of the ridiculous catch-22 buck-passing situation cannot go to school, there's just something wrong from the top on down. We're disturbed that, although a copy of the complaint was sent to BEH, BEH has not even responded or shown any interest whatsoever in the proceeding.

Colorado has no effective provision for the appointment of surrogate parents. They've turned to BEH for guidance. BEH has given none. BEH now has out for comments a proposed interpretative memo. No one knows when or if that memo is going to be turned into reality, when or if States are going to be required to come into compliance.

But certainly this State is not in compliance and cannot get any guidance from BEH, or at least in the past has not. There's a distinct lack of services in this State. Some districts maintain waiting lists. They know, just as we here in this room know, that those are unlawful. If an effective advocate such as the Legal Center calls the district to inquire regarding a specific child on a waiting list, the child gets the service. But how many others whose parents don't know of the existence of these rights are still on the waiting list? Some of the waiting lists are extremely long.

Teachers are intimidated when they come to IEP meetings or, as we call them in Colorado, alternate staffings, which is a similar but not quite patching thing in some districts, and intimidated to the degree that they are instructed prior to going into the meeting that they will not recommend a certain service or that the district only has resources for a certain percentage of that teacher's time to be spent for this child, and regardless of whether the child needs more time with the teacher or more of the service, they will not recommend what the child needs but merely what the district presently has the ability to provide.

Children are being fit into existing resources and programs regardless of their needs. These forced fits often don't work. And when they don't work, rather than the district seeing it as a failure of the forced fit, they see it as a failure of the child.

Particularly critical in this State is the problem of services for autistic and autistic-like children and emotional or so-called behavior problem children. There is no district in this State that provides a free appropriate public education for autistic children age 5 through 21. There are very few districts who even begin to approach providing an appropriate program for autistic children at the elementary school level. There are virtually no appropriate programs anywhere in this State for autistic children of junior and senior high school age and beyond.

So what happens to these children? What happens to these children is that they are forced to fit into inappropriate programs with unskilled and untrained teachers, and they eventually fail. They're suspended, they're expelled, they're ordered for residential placement, they're told that they have medical problems and not educational problems. They'll place them 1 hour a day with homebound tutoring.

An emotionally disturbed or so-called behavior problem child faces the same fate, especially if the child has another handicap, particularly if the child has emotional problems and a problem of mental retardation. Those children are regularly suspended, expelled, recommended for residential treatment which does not exist, placed on homebound programs, or what is now becoming popular or at least as popular is placement in the homebound programs-type districts. The parents are told that their child has a medical problem, their mind is sick. "When you straighten it out, bring them back and we'll be happy to provide some education."

This State is not in compliance with the due process requirement under Public Law 94–142. The State plan for the last several years has indicated that efforts will be made to bring the State into compliance, and BEH has accepted that year after year without requiring any time lines. There does seem to be some hope that in fact this year the State may finally bring its rules into compliance with Federal law. But in the meantime, children are suffering.

The 45-day requirement from date of request for due process hearing to date of delivery of the hearing officer's decision has never been met in a single case the legal center has been involved in. There seems to be no recourse once the district goes beyond the 45 days. You can't default them as you would in a regular lawsuit and automatically get your services. Delays are to the benefit of the school district.

Most of the cases that we're involved in are children trying to get into programs or into services or into new services. The law says the child remains in his present placement pending appeal. So it's to the benefit of the school to put the case off, put the parents off as long as they can to get out of providing the needed service. And from their standpoint, from the standpoint of not having the funds to do this, they must take these kinds of actions by way of self-defense.

In addition, many of the districts just don't understand their obligations under the due process areas. They've not been sufficiently instructed in those areas by people who have sufficient knowledge to be doing the instruction.

The other area of due process dealing with time lines is that the State is supposed to act within 30 days on appeals. The State does not act within 30 days on appeals. Set forth in our written testimony, we cite you a case in which in February a hearing officer ruled that a child was entitled to a certain service. The school district promptly appealed. Here we are in June, and the State has yet to issue a ruling on that appeal. We moved before the State hearing officer for interim relief, that during the period of delay, the child be given services. That request was denied.

We then filed a complaint with OCR against the State. Suddenly, the State department of education said they would pay for the service in the interim. If we had not been involved in that case, if we had not known the law, if these were parents trying to proceed on their own, that child would still be without services.

Parents are not advised of their due process rights as required by law. Whether this is because the districts don't understand the parents have due process rights or what they are or whether districts don't understand they're supposed to advise parents or whether they're just doing it stubbornly, I don't know. The problem still remains.

When a parent has no idea of their rights, when the program is presented to them on a take-it-or-take-nothing basis as is often the case, then the parents take whatever it is because it is better than nothing and nothing is what they've had for so many years in the past.

What can be done to resolve these problems? First of all, I think action needs to be taken on the national level. I don't know whether Colorado is or is not typical of this problem. But clearly, many of these problems cannot be resolved at the State level. The fiscal problem cannot and will not be resolved in this State. If the Federal Government really means what it says in adopting section 504 and adopting Public Law 94–142, then you're going to have to put your money up to prove it, because the States are not going to voluntarily implement it themselves.

Second, there needs to be a total change of attitude. We have a great opportunity, now that we have a new U.S. Department of Education, for that Department of Education to come forth with a firm policy statement backed up by adequate manpower, resources, and actions that says to the world there will be a no-nonsense, firm enforcement of Public Law 94–142: while we're going to be concerned with what is in the State plan, we are going to be concerned with what in reality is occurring. And those States that are in violation are going to be dealt with firmly and severely.

Third, there needs to be an advocacy program for parents. It's important to realize that due process hearings, at least in this State in this day and age, are complex, detailed procedures usually involving a number of expert witnesses and, in cases we've been involved in, usually being scheduled for 2 or more days. Parents cannot handle those kinds of cases on their own. They don't know where to get the expert witnesses. Even if they do, they don't have the funds to pay for them. They don't know the law thoroughly enough to go up against an attorney representing the school district. So there must be an advocacy program to handle some of these problems. It has unspent funds, or at least the Department of Education presently has unallocated and unspent funds, that could be used for this purpose at this time.

Since the P and A's, protection and advocacy systems, are already in place and in existence, sharing some of that funding with them may be one idea. Creating a separate protection and advocacy system for the educationally handicapped to represent handicapped children may be another. But something needs to be done in this area.

Last, but not least, the issue of recourse to the courts needs to be more carefully addressed. The way the statute reads now, you have recourse to the courts to review the actions or rulings on a person's appeal. But how does one get to the court when there's been no hearing, when the State has refused a hearing, or when you cannot get a ruling on your appeal? It should be clear that if the time lines are missed, parents have a right to seek judicial redress. Because only by holding this pressure against all the other pressures that the State education agency and local education agencies have to face are they going to find the time or make the time to move ahead.

I don't want to paint an entirely black or white picture. As I indicated when I started my remarks, great gains have occurred, but great problems remain. And on a national level, those problems need to be addressed. Thank you.

Mr. SIMON. Thank you.

[Material submitted by Bruce Bernstein follows:]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Civil Action No. ___________

ASSOCIATION FOR RETARDED CITIZENS
IN COLORADO; LEGAL CENTER FOR
HANDICAPPED CITIZENS: ESTEVAN
SOLIS, JR., a minor by and
through his parents, Esteven and
Olivia Solis; TIMMY CLARE, a
minor by and through his parents,
Robert and Sally Clare; AMY
BECKER, a minor by and through
her mother, Cafol Becker;
RUSSELL LANGREN, a minor by and
through his parents, Raymond and
Rita Langren; WALTER PHILIP
HILTON, by and through his
parents, Leslie and Elaine
Hilton; and ALL OTHER PERSONS
SIMILARLY SITUATED.

Plaintiffs,

v.

CALVIN FRAZIER, individually and
in his capacity as Commissioner
of the Colorado Department of
Education; and THE COLORADO
DEPARTMENT OF EDUCATION.

Defendants.

COMPLAINT

I
PRELIMINARY STATEMENT

1. This is a class action brought by and on behalf of all handicapped children age 5 to 21 living at the state home and training school at Ridge (hereinafter "Ridge") who have been denied

a free appropriate public education because their parents do not reside within the boundaries of School District No. R-1 in the County of Jefferson and State of Colorado (hereinafter "Jefferson County Public Schools"). They seek declaratory and injunctive relief for deprivation of their civil rights as a result of failure of the Defendants to assure them a free appropriate public education as required by federal statutory and constitutional law.

2. Ridge is a public residential care facility for the mentally retarded. It is located in Jefferson County, Colorado, within the boundaries of Jefferson County Public Schools, a local education agency.

3. The Plaintiffs' parents reside within the boundaries of various local education agencies across the state, other than Jefferson County Public Schools.

4. Jefferson County Public Schools have refused to provide Plaintiffs with a free appropriate public education because their parents do not reside within the boundaries of Jefferson County Public Schools. Plaintiffs have been unable to receive a free appropriate public education from the local education agency where their parents reside because Plaintiffs live at Ridge.

5. Defendants have failed to discharge their duty to provide or assure that Plaintiffs receive a free appropriate public education despite their living at Ridge. As a result, Plaintiffs have not received or had an opportunity to receive a free appropriate public education since the day they moved to Ridge.

II
EDUCATION OF THE HANDICAPPED ACT

6. In 1975, the Congress enacted the "Education of the Handicapped Act" P.L. 94-142, codified at 20 U.S.C. §1401 et seq. (hereinafter the "Act"). The Act resulted from congressional determinations that, inter alia, more than half of all handicapped children in the United States do not receive appropriate educational services and one million such children are excluded entirely from the public school system. It was enacted to remedy these conditions.

7. The purpose of the Act is to assure that all handicapped children have available to them a free appropriate public education in the least restrictive appropriate setting, to assure the protection of the rights of such children and their parents, and to financially assist states and localities to provide for such education.

8. Under the Act, and as used herein, "handicapped children" or "handicapped child" means children aged 5 to 21 years who are mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, or other health impaired children, or children with specific learning disabilities, who by reason thereof require special education and related services as defined in 20 U.S.C. §1401 (16) and (17) and the regulations implementing the Act.

9. The Act and its regulations (found at 45 C.F.R. Part 121.a), particularly emphasize the interest of Congress that a free appropriate public education be provided to handicapped children residing in public institutions such as Ridge.

10. The Act and its regulations provide a detailed procedure to assure quality educational services, individualized to the needs of each handicapped child, and delivered in the setting least restrictive to the child. Collectively, these procedures constitute a free appropriate public education. They include assumption by an educational agency of responsibility to provide each child with all the services and protections; an intensive, multi-disciplinary assessment to determine the existence, nature, degree and type of handicap; a multi-disciplinary conference to identify the child's special education and related services needs, such as special programs of instruction, physical therapy, self help skills, speech services and others, and to design an individualized education program for the child with measurable short and long term goals; delivery of such educational program in the setting least restrictive to the child's needs; provision of interim services while awaiting final placement in an educational program; an annual review of the child's progress and changing needs; and elaborate due process procedures to assure parental involvement and consent at each stage of the procedure.

11. States may apply for and receive funds under the Act to assist them in providing every school age child with a free appropriate public education. As part of the duties in accepting such funds, each state must assure that each handicapped child in the state will receive a free appropriate public education. States receiving assistance were granted until October 1, 1977, to meet the requirements of the Act.

III
SECTION 504 OF THE REHABILITATION ACT OF 1973

12. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794) was enacted by Congress as part of a total bill of rights for handicapped individuals, who, due to their handicaps, had been denied the benefits and fundamental rights of society. It applies to all recipients of federal financial assistance.

13. In 1977, the U.S. Department of Health, Education and Welfare issued regulations at 45 C.F.R. Part 84, implementing Section 504. The regulations provide, at 45 C.F.R. §84.33 and §84.54, that each recipient of federal funds for programs or activities dealing with the education of school aged children shall ensure that each handicapped child, including institutionalized children, is provided a free appropriate public education. A program complying with the requirements of the Act and its regulations is an acceptable method of complying with Section 504.

IV
JURISDICTION ALLEGATIONS

14. This is an action pursuant to 42 U.S.C §1983 to redress the deprivation, under color of state law, of rights, privileges or immunities secured by the Constitution and laws of the United States, to wit:

a) Denial of rights of the Plaintiffs to equal protection of the law secured by the Fourteenth Amendment to the U.S. Constitution.

b) 20 U.S.C. §1401 et seq. and its implementing regulations.

c) 20 U.S.C. §794 and its implementing regulations issued by the U.S. Department of Health, Education and Welfare.

15. Jurisdiction is conferred upon this Court under 28 U.S.C. §1331, 1343(3) and (4) and 20 U.S.C. §1415e. The declaratory and injunctive relief prayed for in this action is authorized by 28 U.S.C. §2201 and 2202, and Rules 57 and 65 of the Federal Rules of Civil Procedure. Monetary damages are inadequate and Plaintiffs have suffered irreparable harm from Defendants' actions, practices, omissions, policies and procedures complained of herein, and will continue to suffer such harm unless injunctive relief is granted as prayed below.

V
PLAINTIFFS

PLAINTIFF ASSOCIATION OF RETARDED CITIZENS IN COLORADO

16. The Association for Retarded Citizens in Colorado (hereinafter referred to as ARC/C) is a non-profit organization composed of over 4,800 members in 18 local chapters throughout the State of Colorado. Membership consists of concerned citizens including professionals, parents and relatives of mentally retarded or otherwise developmentally disabled persons, and mentally retarded and developmentally disabled persons themselves. It is organized to advocate and advance the rights of all mentally retarded citizens of Colorado. Some chapters of ARC/C have been organized to advance the rights of all developmentally disabled persons and include members who have developmental disabilities other than mental retardation.

17. ARC/C vigorously represents the interests of developmentally disabled citizens of Colorado.

18. ARC/C and its members suffer real and substantial harm as a direct result of Defendant's conduct. Specifically, Defendants do not provide or assure the provision of constitutionally and statutorily mandated education to ARC/C members and their families. The relief sought will result in substantial benefit to same.

PLAINTIFF LEGAL CENTER FOR HANDICAPPED CITIZENS

19. The Legal Center for Handicapped Citizens (hereinafter referred to as LCHC) is a trade name for the Center for Legal Advocacy, a non-profit corporation which promotes and protects the legal rights of handicapped citizens.

20. Pursuant to 42 U.S.C. §6012, the Office of the Governor has appointed LCHC as the Protection and Advocacy System for developmentally disabled citizens in Colorado.

21. Pursuant to 42 U.S.C. §6012, as the Protection and Advocacy System in Colorado, LCHC has the duty and authority to independently pursue legal, administrative, and other appropriate remedies to ensure the protection of the rights of developmentally disabled persons who are receiving treatment, services, or habilitation within Colorado.

22. LCHC vigorously represents the interests of developmentally disabled and other handicapped citizens of Colorado.

23. Children who LCHC represents as the Protection and Advocacy System in Colorado, and other handicapped children, suffer real and substantial harm as a direct result of Defendant's conduct. Specifically, Defendants do not provide or assure the provision of constitutionally and statutorily mandated education for those LCHC represents. The relief sought will result in substantial benefit to same.

PLAINTIFF ESTEVAN SOLIS, JR.

24. Estevan is an 11 year old multiply handicapped child who is disabled due to mental retardation and physical disabilities.

25. Estevan lives at Ridge, where he was placed April 7, 1977, when he was 8 years of age. He was so placed because of his need for specialized 24 hour residential care resulting from his physical and mental handicaps, and lack of such care in Weld County. His parents live in Weld County, Colorado within the service boundaries of the Weld County Board of Cooperative Services (hereinafter Weld BOCES), a local education agency.

26. Due to his handicaps, the fact that he lives at Ridge and the fact that his parents do not live within the boundaries of Jefferson County Public Schools, Estevan has not had the opportunity to attend school and receive a free appropriate public education since at least April of 1977.

27. Estevan's special education and related services needs include, at a minimum, a full day program of education for trainable mentally retarded children; physical therapy; occupational therapy; communication skills including speech therapy and language development and use of a communication board; self help skills including feeding and toileting; music therapy; socialization skills; adaptive equipment including an appropriately designed wheelchair; individual and small group instruction; relaxation techniques and recreational activities including swimming.

28. In June of 1979, his parents made a demand upon the Weld BOCES to provide Estevan with a free appropriate public education. Pursuant to that request, the Weld BOCES conducted an educational assessment of Estevan and concluded that he was handicapped and in need of special education and related services.

29. The Weld BOCES refused and continues to refuse to provide such services on the basis that Estevan lives at Ridge.

30. In November of 1979, Estevan's parents made a demand upon Jefferson County Public Schools to provide Estevan with a free appropriate public education.

31. Jefferson County Public Schools refused and continues to refuse to serve Estevan, because his parents reside in Weld County.

32. Estevan's parents appealed the refusal to serve by the Weld BOCES and demanded a hearing as provided in 45 C.F.R. §121a.506. They also demanded that interim special education and related services be provided during the pendency of their appeal, as provided in 45 C.F.R. §121a.513. On December 12, 1979, they were advised by a representative of the local education agency that their demand for a hearing was refused.

33. On December 13, 1979, pursuant to 45 C.F.R. §121a.510, Estevan's parents appealed to Defendants the denial of a hearing and failure to provide interim services. They requested that Defendants assure that some local education agency provide such services or that Defendants provide such services themselves.

34. On December 20, 1979, the Defendants' summarily affirmed such denials, without offering Estevan or his parents a hearing. Defendants failed to assure that any local education agency provided interim or permanent services and did not provide such services itself.

35. Estevan is not presently being provided a free appropriate public education.

36. Defendants have had actual knowledge of his plight since at least November of 1979.

PLAINTIFF TIMOTHY CLARE

37. Timmy Clare is a 16 year old multiply handicapped child who is mentally retarded and deaf.

38. He lives at Ridge and has done so since February of 1972, when he was placed due to his need for specialized 24 hour residential care due to his physical and mental handicaps and lack of such care in Weld County. His parents live in Weld County, Colorado, within the boundaries of the Weld BOCES, a local education agency.

39. Due to his handicaps, the fact that he lives at Ridge and the fact that his parents do not live in Jefferson County, Timmy has not had the opportunity to attend school and receive a free appropriate public education since at least February of 1972.

40. Timmy's special education and related services needs include, at a minimum, a full day combined deaf education-trainable mentally retarded education program; intensive total communication system including sign language; pre-school training program; pre-vocational training program; community experience and relations; occupational therapy;

recreational therapy including swimming; a structured educational setting with one-to-one attention at all times, and an intensive behavior management program.

41. In October of 1979, his parents made a demand upon the Weld BOCES to provide Timmy with a free appropriate public education. Pursuant to this request, the Weld BOCES conducted an educational assessment of Timmy and concluded he was handicapped and in need of special education and related services.

42. The Weld BOCES refused to provide such services on the basis that Timmy lives at Ridge, and continues to so refuse.

43. In November of 1979, Timmy's parents made a demand upon Jefferson County Public Schools to provide Timmy with a free appropriate public education.

44. Jefferson County Public Schools refused and continues to refuse to serve Timmy because his parents reside in Weld County.

45. Timmy's parents appealed the refusal to serve by the Weld BOCES and demanded a hearing as provided in 45 C.F.R. §121a.506. They also demanded that interim special education and related services be provided during the pendency of the appeal. On December 12, 1979, they were advised by representatives of the local education agency that their demand for a hearing was refused.

46. On December 13, 1979, pursuant to 20 C.F.R. §121a.510, Timmy's parents appealed to Defendants the denial of a hearing and failure to provide interim special education and related services. They also requested that Defendants assure that some local education agency provide such services or that Defendants provide such services themselves.

47. On December 20, 1979, the Defendants summarily affirmed such denials, without offering Timmy or his parents a hearing. Defendants failed to assure that any local education agency provided interim or permanent services and did not provide such services itself.

48. Timmy is not presently being provided with a free appropriate public education.

49. Defendants have had actual knowledge of his plight since at least November of 1979.

PLAINTIFF AMY BECKER

50. Amy Becker is a 10 year old handicapped child who is disabled due to mental retardation.

51. She is a resident of Ridge, where she was placed April 3, 1974, due to her extensive special needs resulting from her severe handicap. Her parents live within the boundaries of Denver Public Schools, a local education agency, in Denver, Colorado.

52. Due to her handicap, the fact that she lives at Ridge and the fact that her parents do not live within the boundaries of Jefferson County Public Schools, Amy has never had the opportunity to attend school and receive a free appropriate public education.

53. At a minimum, Amy's special education and related services needs include a full day program of education for trainable mentally retarded children and a language oriented environment; speech therapy including a usable communication system; music therapy; occupational therapy; physical therapy; recreation therapy including swimming; self help skills including dressing and hygiene; one-to-one instruction; socialization skills including appropriate peer and adult interaction; and a highly structured and organized behavior management system.

54. In September of 1979, Amy's parents made a demand upon Denver Public Schools to provide Amy with a free appropriate public education. That demand was refused on the basis that Amy lived at Ridge.

55. In October of 1979, Amy's parents made a demand upon Jefferson County School District to provide Amy with a free appropriate public education. That demand was refused on the basis that Amy's parents reside in the City and County of Denver.

56. In October of 1979, a complaint was filed with Defendants pursuant to 45 C.F.R. §121a.602 alleging that Amy was being denied a free appropriate public education and requesting that Defendants assure that some local education agency provide special education and related educational services, including interim services pending final resolution. Defendants did not take such action, have set no hearings and issued no rulings pursuant to the complaint.

57. Amy is not presently being provided with a free appropriate public education.

58. Defendants have been aware of her plight since at least October of 1979.

PLAINTIFF RUSSELL LANGREN

59. Russell is a 6 year old handicapped child who is disabled due to autism.

60. Russell lives at Ridge and has done so since November 5, 1978, when he was 5 years of age. Russell was placed in Ridge due to his need for specialized 24 hour residential care due to his mental and physical handicaps and lack of such care in Otero County. His parents live in Otero County, Colorado, within the boundaries of the Arkansas Valley Board of Cooperative Services (hereinafter Arkansas Valley BOCES), a local education agency.

61. Due to his handicaps, the fact that he lives at Ridge and the fact that his parents do not live within the boundaries of Jefferson County Public Schools, Russell has not had the opportunity to attend school and receive a free appropriate public education since at least November 5, 1978.

62. At a minimum, Russell's special education and related service needs include a pre-school program of education for autistic children; speech therapy; occupational therapy; and recreational therapy.

63. On February 26, 1980, his parents made a demand upon the Arkansas Valley BOCES to provide Russell with a free appropriate public education. That demand was refused on the basis that Russell lives at Ridge.

64. Russell is not presently being provided with a free appropriate public education.

PLAINTIFF WALTER PHILIP HILTON

65. Walter is a 19 year old handicapped child who is disabled due to mental retardation and physical disabilities.

66. Walter lives at Ridge and has done so since August 21, 1967, when he was 7 years of age. Walter was placed in Ridge due to his need for specialized 24 hour residential care due to his mental and physical handicaps and lack of such care in Boulder County. His parents live in Boulder, Colorado, within the boundaries of Boulder Valley Public Schools, a local education agency.

67. Due to his handicap, the fact that he lives at Ridge and the fact that his parents do not live within the boundaries of Jefferson County Public Schools, Walter has never had the opportunity to attend school and receive a free appropriate public education.

68. At a minimum, Walter's special education and related service needs include a full day program of education for mentally retarded children; speech/language therapy including a usable communication system; music therapy; occupational therapy; physical therapy; recreation therapy including swimming; self help skills including daily living skills; socialization skills including appropriate peer and adult interaction; pre-vocational training program; and a structured behavior management system.

69. Walter is not presently receiving a free appropriate public education.

VI
DEFENDANTS

70. The Colorado Department of Education is an agency of the State of Colorado. Pursuant to 20 U.S.C. §1412(6) and Subpart F of 45 C.F.R. Part 121a, it has accepted designation under the Act as the state agency responsible for assuring that the provisions of the Act and its regulations are carried out in Colorado, including but not limited to being responsible to assure that each handicapped child in Colorado receives a free appropriate public education.

71. Calvin Frazier, as Commissioner of Education in Colorado, is the chief state school officer and executive director of the Department of Education. In such position he is responsible for the management, supervision and direction of the Department of Education.

VII
CLASS ALLEGATIONS

72. This is a class action brought pursuant to Rule 23 F.R.C.P.

73. The class consists of all handicapped children age 5 to 21 years of age who live at the state home and training school at Ridge at the present time, at any time since June 3, 1977, or who may so live at any time in the future and whose parents reside other than within the boundaries of School District No. R-1 in the County of Jefferson and State of Colorado.

74. This is a proper action for class relief pursuant to Rule 23(a) in that:

a) The class consists of approximately 300 persons and therefore is so numerous that joiner of all members is impracticable.

b) There are substantial questions of law and fact common to the entire class.

c) The claims of the Plaintiffs are typical of the claims of the class.

d) The named Plaintiffs will fairly and adequately protect the interests of the class.

e) Prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class, which would establish incompatible standards of conduct for Defendants.

75. Plaintiffs bring this action pursuant to Rule 23(b)(1) because the prosecution of separate actions would create a risk of adjudications with respect to individual members of the class which would as a pratical matter be dispositive of the interests of the other members, not parties to the adjudication or substantially impair or impede their ability to protect their interests.

76. Plaintiffs bring this action pursuant to Rule 23(b)(2) because:

a) The Defendants have acted or refused to act on grounds generally applicable to the class, thereby making final injuncitive relief and corresponding declaratory relief appropriate with respect to the class as a whole.

b) Questions of law and fact common to the members of the class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

VIII
ADDITIONAL FACTUAL ALLEGATIONS

77. Handicapped children who live at Ridge and whose parents reside within the boundaries of Jefferson County Public Schools are able to receive a free appropriate public education.

78. Defendants, in their capacity as a federal fund recipient, knew or should have known since June 3, 1977, the effective date of the regulations implementing Section 504, that substantial numbers of members of the Plaintiff class were not receiving a free appropriate public education.

79. As early as May of 1979, Defendants had actual knowledge of allegations that substantial numbers of the Plaintiff class were not receiving a free appropriate public education and requests were made that Defendants take steps to remedy such situation.

80. Defendants have failed to remedy such situation by failing to assure or provide members of the Plaintiff class with a free appropriate public education.

81. Since August of 1978 and at all times subsequent, Defendant Department of Education received federal funds pursuant to the Act.

82. Since at least June of 1977 and at all times subsequent, Defendant Department of Education received federal financial assistance from the U.S. Department of Health, Education and Welfare for programs or activities of education and of special education and related services to handicapped children in Colorado.

83. At all times herein relevant, all actions and failures to act by the Defendants were under color of State Law.

FIRST CLAIM FOR RELIEF

84. Defendants' actions and failures to act to assure or provide members of the Plaintiff class with a free appropriate public education violate and abridge Defendants' duty to assure or provide, and the rights of members of the class to receive, a free appropriate public education in violation of 20 U.S.C. §1401 et seq. and its implementing regulations.

SECOND CLAIM FOR RELIEF

85. Defendants' actions and failures to act to assure or provide members of the Plaintiff class with a free appropriate public education violate and abridge Defendants' duty to assure or provide, and the right of members of the class to receive a free appropriate public education in violation of 20 U.S.C. §794 and its implementing regulations.

THIRD CLAIM FOR RELIEF

86. Defendants' actions and failures to act to assure or provide members of the Plaintiff class with a free appropriate public education violate and abridge the rights of members of the class to the equal protection of the law in violation of the Fourteenth Amendment to the U.S. Constitution.

PRAYER FOR RELIEF

Wherefore, Plaint'ff's on their own behalf and on behalf of their class, (hereinafter collectively referred to as Plaintiffs) pray for relief as follows:

a) Issue an order permitting this action to proceed as a class action.

b) Issue a declaratory judgment:

(i) That Plaintiffs have a right to receive a free appropriate public education despite their handicaps, despite the fact they live at Ridge and despite the fact that their parents do not reside within the boundaries of Jefferson County Public Schools.

(ii) That Defendants have, under color of state law, violated that right.

c) Issue preliminary and permanent injunctions requiring Defendants to:

(i) Forthwith locate each member of the Plaintiff class.

(ii) Forthwith offer to provide each member of the Plaintiff class with a free appropriate public education in full compliance with all requirements of 20 U.S.C. §1401 et seq., 29 U.S.C. §794 and their implementing regulations, including but not limited to immediate entrance to an appropriate school program.

(iii) Provide each member of the class who has not received a free appropriate public education while at Ridge subsequent to June 3, 1977, with compensatory special education and related services for each day a free appropriate public education was not provided.

d) Appoint a panel of experts to oversee implementation of the Court's orders.

e) Retain continuing jurisdiction over the case.

f) Award Plaintiffs their costs and reasonable attorneys fees; and

g) Award such other, further or different relief as the Court deems appropriate in the circumstances.

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Mr. SIMON. I understand that we now have an addition to the panel. Ms. Combs, speaking on behalf of Colorado Assoc. for Retarded Citizens. I might mention for Ms. Combs and for any other witnesses here, you're going to have to keep your remarks brief where you can, summarize your statement rather than read your statement. It will accommodate our time schedule.

Ms. Combs, can you identify yourself for the record?

STATEMENT OF AWYN COMBS, PARENT, EDUCATION CHAIRMAN, ASSOCIATION FOR RETARDED CITIZENS IN COLORADO

Ms. COMBS. I'm Awyn Combs. I'm a parent of a handicapped child, and education chairman for the Association for Retarded Children in Colorado.

One of our major concerns is the fact that the school age children in our State institutions are receiving less than an adequate education, and in many cases very few of the related services that are spelled out in Public Law 94–142. In those cases where services may be provided, this provision is at such a limited level that it does not approximate an appropriate educational level.

Part of the problem exists because of continuing resistance of either the local education agencies where the institution is located or by the local education agency where the parents or guardian of the child live to accept responsibility for the provision of educational services for those children. Each group continues its argument that the other has that responsibility. Although the State Department of Education has issued a directive regarding this situation, there seems to be little change coming about.

The second issue is transportation. Many parents are being put into the position of having to fight for that service. One school district will pay the parents to provide the service, but mileage is only being paid for one way, not for the round trip which is of course required.

In other instances, the buses for the handicapped are run either very early, before, or very late after all the regular children have been transported. In the event of bad weather, it is the special education transportation that is canceled even though regular education children will be provided transportation. The argument given is that it is not right to expose the handicapped to the danger of bad weather. This may have some validity. But we feel that if transportation is provided for any, it should be provided for all.

There seems to be a great discrepancy as to what must be included in an IEP. Some annual goals are no more than a will-improve statement. This seems to our organization to be a goal of all education and should not be the statement on an IEP for a handicapped child. The provision of related services is inadequate, and parents are being forced to go to great lengths to obtain those services if, indeed, they are provided. Sometimes parents are told that the child does need related services, but they are not available in that local school district.

Local school personnel are warned not to indicate a need for a specific service because if it is on the IEP, it must be provided. This is directly contrary to what we understand to be the purpose of the act. There seems to be a great void in the understanding as to what constitutes an objective.

The ARC in Colorado feels strongly that there has been completely inadequate direction given to the local education agencies from the Colorado State Department of Education on IEP's. And when the direction was given, it was to the effect that IEP's should be kept very general and not get into specific needs and services. It seems to us that this is a system that insures inadequate services and protects the State department of education from being responsible to assure the provision of needed services to all children.

We would also like to see a system developed and adopted by the State Department of Education that would allow a complaint to be made regarding a particular school district if it is providing inadequate services. This should be a system that would allow for agencies to speak to a particular issue that impacts on all handicapped students in that district. A part of this system would then require the State Department of Education to monitor that district and require them to come into compliance.

Finally, we support the comments that we have received that were made by the Legal Center for Handicapped Citizens and those that were presented by the Developmental Disabilities Council. We appreciate the opportunity to make this statement and hope that the future will improve for the educational climate for the handicapped child in the State of Colorado. Thank you.

Mr. SIMON. Thank you, Ms. Combs.

Mr. DeWitt, in your statement you say learning disabilities has been used as a dumping ground for those students who are having a problem in the regular education classroom, and the teacher does not know how to handle them—that there are too many students in learning disability classes who shouldn't be there. Now, how do we solve that problem?

Mr. DEWITT. There needs to be a more adequate definition of what a learning disability is. That was tried before and got so restricted it was difficult to get students in. But one of the solutions is the increased service and in-service training of regular educators so that they're not of the mind that:

> I teach in one certain and specific way. If that student fits into my mold, all well and good. If not, let's put him into one of the special classes where I can get him out of my classroom.

And the concept of:

> I'm going to have this child uneducated. I'm just going to have him out and taken care of.

I wear two hats. I am a teacher as well as representing the association. I see that many times. And a special education teacher has to fight both the regular classroom teachers and the principals in the building who are both looking to make that classroom as easy as possible for the regular classroom teacher, and to move those special education students out of the mainstream where they interfere with the education of regular students.

Mr. SIMON. You and Ms. Combs mentioned the IEP. We do hear a great deal of complaints about the IEP.

I just thought I might ask how many of you in here are parents of handicapped children?

[Audience response.]

Mr. SIMON. About 20 roughly.

How many of you feel you were adequately consulted in your own child's IEP?

[Audience response.]

Mr. SIMON. Somewhere between a third and a half.

Ms. COMBS. I'd have to qualify mine, because I stayed on it until I got the services that were needed. I stayed with the IEP until my son got the services that were needed. I didn't sign it.

Mr. SIMON. I'm sure there would be many that would qualify that way.

Let me ask you this: How many of you feel that while you may have been involved in the IEP because of your own personal activity, you know many parents who were not involved, whatever the case might be?

[Audience response.]

Mr. SIMON. A substantial majority.

Mr. DEWITT. Sir, can I make a statement about that?

Mr. SIMON. Yes.

Mr. DEWITT. In writing a number of them and being aware of a number of teachers who write them, many times the IEP is not explained before the IEP meeting. So a parent comes into a meeting with a prewritten IEP made by the teacher. They're presented with the goals and objectives for the student and asked, "Are there any things you want to add to them?" rather than it actually being formulated by the teacher and the parents. This is, again, against the letter of the law.

Mr. SIMON. Mr. Bernstein, it is inappropriate for us, obviously, to comment about a suit now pending in court. But in the case of the four children—is the suit on behalf of the four children?

Mr. BERNSTEIN. Yes, sir. It's a class action suit representing all children in that situation.

Mr. SIMON. In the case of the four children, did you go also to the Office for Civil Rights? Did you go to BEH? If so, what kind of a response did you get from those two agencies?

Mr. BERNSTEIN. Well, if I can give you a little background. The four children, obviously, came in at different times and so different actions were commenced. It became apparent we were getting nowhere with any of the actions. There is a pending OCR complaint on either one or two of the children.

When we contacted the local education agency where the parents resided, they went ahead and staffed and wrote up an IEP for the children, and then announced that they would not serve the children until they moved back to the district. We appealed that and asked for a due process hearing about two days before the hearing. On the advice of their counsel, that school district canceled the hearing and told us we were not entitled to the hearing. We then appealed that to the State department of education. The State department of education basically agreed that we were not entitled to any hearing and took no further action.

BEH was involved in this situation initially in May of 1979 when the whole problem of institutionalized children was called to their attention both by phone calls, by personal meeting, and by written comments. Their response at that time was so negative, so disinterested, they were not called in on the four children.

The complaint, however, was sent to them in the first or second week in May for their interests. We've never had any response from them as to whether they have any interest in any manner whatsoever.

Mr. SIMON. I think it should be noted for the record that the failure of BEH to respond has been one of the things that witnesses have documented in this hearing as well as in many other hearings.

Mr. Bernstein, you say some of the waiting lists are extremely long. What waiting lists, where, and what do you mean by extremely long?

Mr. BERNSTEIN. Without reviewing the individual case files, I can't give you great specifics. We do get calls on a disturbingly frequent basis, parents calling in generally with a question saying, "My child is in such and such a district and is on the waiting list for——" and it's generally related services, speech, OT, PT, something along those lines. "Someone told me they thought they heard that maybe that wasn't exactly proper."

In many instances when we call that district, because of our reputation—we are certainly known by I'm sure every district in the State. In many instances, they indicate, "We will take care of that child's problem." In fact they do.

Our concern is how many others just never do, just never make the phone call. We are firmly convinced there are children who need particularly related services that just are not getting them, particularly in rural areas but also in urban areas of the state.

Mr. SIMON. In your testimony, you mentioned autistic children generally are not getting services. But on these waiting lists are we talking about a year, or are we talking about——

Mr. BERNSTEIN. I think most of them seem to rise, particularly with children who come into the district or one found or are located in the district, after the school year has begun. And they wait out at least that school year. Others are placed in other districts where there is room and then bumped out.

For example, we're working with a child now who needs a special classroom setting. The local district doesn't have it but has located two or three in the surrounding areas who do. And they're willing to accept a child but only on the basis that if another child moves into the other district, our child will be bumped out. Otherwise, he's not going to get the service.

So it's this bouncing back and forth situation. Particularly in the area of related services, speech, OT, PT come up all the time. Counseling services seem to come up frequently. Transportation is a tremendous problem. I think the law is clear that parents need not drive and accept mileage. Requiring them to accept mileage one way is outrageous. Requirement to drive is outrageous if they don't wish to drive. If they wish to drive, that's their business.

Basically, parents are told.

> We don't have room for your child this year. We'll do the best we can with what we've got. Hopefully, next year or next quarter or next semester or whenever, we'll get around to getting something for him.

I'd have to go through our files and come up with some more specific examples of that.

Mr. SIMON. One final question from me, and then I'll defer to my colleague. I also happen to sit on the Budget Committee of the House. We, as you're probably aware, are far below the authorization level on budgeting. I have been at best moderately successful in getting my colleagues to fund these programs. The argument that is used against me in the committee is if we raised the level of funding from 12 percent, say, to 20 percent—and I would love right now to move to that 20 percent—but what we are doing is in fact not increasing services for the handicapped child but simply replacing State funds with Federal funds. There really is no additional service to the handicapped child.

I would be interested in the comments that any of you might have—any insights you might have on that question.

Mr. DEWITT. I think one of the things which is, as Mr. Bernstein spoke to, with a stronger commitment from BEH to enforce the State plans and also to be aware where the States are then cutting back their services or their financial commitments. That would necessarily help, that the States are not substituting money, I think once the BEH is pushed hard. And the new Department of Education should be aware and be a strong advocate. That will help the States to know that there's somebody looking over their shoulder. I don't think that feeling exists right now. I think they're feeling that the funds are coming in, and they're free to do with them as they please.

Mr. SIMON. Any other comments? Ms. Combs?

Ms. COMBS. I really feel that with our legislators, there is indeed some danger of that happening, that they would—say you had the Federal funds. We don't need any more State funds.

Mr. SIMON. Mr. Bernstein?

Mr. BERNSTEIN. I guess from my standpoint, I would concur with both of those statements. But in this State, I'm firmly convinced that there are many hundreds of either unserved or underserved children or underserved children that are so underserved that they might as well be called on to serve. The big story of the LEA's—and I don't think it's a story; it's the truth—is they don't have the dollars. I think the problem is they're not allocated properly to comply with the law. I think if they had more money, that would certainly eliminate that excuse and that in fact there should be some increase in services.

The problem is that there should not be unserved children or severely underserved children, and there are. How you get around those two rocks, I'm not really sure.

Mr. SIMON. Mr. Kramer?

Mr. KRAMER. Thank you, Mr. Chairman.

Russ, do you feel that your typical school or school district has accepted learning-disabled children as being within the mandate of Public Law 94-142, or do they use the children that are kind of a catchall and kind of get lost in the shuffle?

Mr. DEWITT. It depends on the severity of the learning disability. The severe learning-disabled kid pops up immediately, and the school districts definitely accept their commitment to them. It comes more into the situation with the moderate and mildly learning-disabled student. I perceive it's the role of the regular educator with inservice training to teach the mildly learning-disabled student within that classroom.

The moderate student who's getting the D's and F's in his classes and people aren't really sure—but then when tested and they look at the special education classroom as being full or getting close to capacity, those students are not accepted into the learning-disability labs or classrooms as they need to be.

Mr. Kramer. When we conversed several months ago, you indicated to me I think—and I didn't see it anywhere in your testimony—that you had some definite feelings about cost effectiveness in terms of utilizing the funds available under Public Law 94–142. I don't want to set up a controversy here among the various classes of handicapped as they might fall in the spectrum. I think it might be worth it in a very abbreviated form to mention that to us so that it is a factor that will at least be put into the record somewhere else. Someone may be able to take note of that at a future time. Also some others who might be impacted adversely by that prioritization might have an opportunity to respond to as they come up to testify.

Mr. DeWitt. Yes. I agree. I think the learning-disabled student is one in which the smallest dollar commitment, be it one hour a day of services in special education classrooms, some minor speech language services, who can turn around their educational career the most quickly so that they can become then full productive students and citizens in the country—tax-paying citizens. I think it does not require a major investment to provide the services for a learning-disabled student.

But in letting those things go and letting the disability develop—over 80 percent of the incarcerated in the State of Colorado have been identified as having learning disabilities in a number of studies. If we look at the cost of adjudicating those students, their residential care, the whole court process for those students, we're looking at a considerable sum—far greater than what it would cost us for the simple education and remediation for those students.

Mr. Kramer. Mr. Bernstein, from where does the funding for your organization come? One of the questions I was going to ask you was whether or not you only advocated on a 1-to-1 basis for each individual student or whether you got involved in class actions representing groups. You answered that question already in some of your prior testimony. Can you tell us where your funding comes from?

Mr. Bernstein. Approximately 45 percent of our funding comes from our designation as the State protection and advocacy system under the Federal Developmental Disabilities Act which is, of course, Federal moneys that come to us. The other, basically, half of our funds come from a variety of sources. A private foundation supports us. The Colorado Developmental Disabilities Council generally provides a grant. The Association for Retarded Citizens and other advocacy groups on behalf of handicapped such as Easter Seals have made contributions. We do some fund raising activities. We had a ski-a-thon in the winter and raised some funds in that fashion.

We also have had support for the last 3 years from the VISTA program. We've had VISTAs assigned to our program. And last, but certainly not least, we've been awarded grants through the CETA program.

Mr. **Kramer**. What would you say if you had to take into conjunction developing the disabled act and VISTA volunteers you have and the CETA, it would be a fair statement that they provide over half of your funding?

Mr. **Bernstein**. Yes.

Mr. **Kramer**. Let me ask this about the IEP if I could. Does any pattern of problems emerge in terms of either disagreements with parents or teachers and educators in developing the IEP? To what extent is the provision or discussion of the provision of related services a hangup in the development of the IEP? Obviously, of course, to the extent that the related services costs get put on to the school district, you have increasingly high costs. School districts, listening to some people speaking on their behalf, see no problems in the related services. But, of course, they want someone else to pay for it. That's understandable when only one shares the problem of where does the money come from. Could you comment on that for us.

Ms. **Combs**. I think the parents that I know, probably their biggest problem is getting into related services, getting speech therapy for the child who has a real communication problem. We have to hang on and hang on and hang on it. And we may get it.

Mr. **Kramer**. How is that resolved in a typical situation? I mean does the school district agree to carry that burden, or what happens to it?

Ms. **Combs**. Well, in various ways. As I said in my statement, some school districts say, "Well, they need it. But it's not available here," which means the child doesn't get it. Sometimes they'll go ahead and if we get somebody from the legal center or if we happen to have a parent who can be strong and speak for themselves or some advocacy group, the child may indeed get it.

I can't say that I really am comfortable that almost any school district is going to come forth and say, "Hey, your child needs this. We're going to see that he gets it." I just don't really see that happening very often on a full basis. Maybe on a limited basis.

Mr. **Kramer**. Thank you.

Mr. **Bernstein**. If I could respond to that very briefly? From our standpoint, just the whole process of negotiation, arm twisting, whatever you want to call it, usually resolves the situation. Although, for example, we've represented well over 300 children, we've had less than six due process hearings. Almost everything, although there have been many, many appeals, are resolved in the interim. And I think it's a situation whereas—and this is an example of progress. Several years ago the district may well have taken a position where occupational therapy was not the responsibility of the district, period. The position they seem to be taking now is the child doesn't need that service. If the child did, we would provide it.

Our response to that is we go out and locate the higher authority and sometimes get without charge our own experts and demonstrate that in fact the child does need the service. It seems like in related service areas, the districts are very reluctant on their own to say to the parent, you know, "Your child doesn't walk right. Maybe he should have a physical therapy evaluation, and maybe we can provide services." The parent comes to us and says, "Jimmy doesn't walk right, but the school has never said anything about that." We'll send the child to our own experts that we've used, get a report back, send it to the school, make a demand, and usually the demand is met.

The problem is that's one child we've helped in that district. Maybe there are 50 more, maybe 100 more, maybe there aren't any more. But I expect it's a districtwide problem. They're not finding the problem because they're just not looking. They just don't have their eyes open. From their standpoint, they can't. Because if they did, they'd drown literally I think in the expense of providing the service.

Attitudinally, even though districts realize they have to provide these services, especially people that have been in education for a long time, just take the position that this stuff isn't education. It's something else. And I find that hard to believe when you look at all the things schools provide and call education, and teach children to talk or walk is not education. But that attitude is still very pervasive, especially among the long timers. And most of the administrators are, of course, skilled and have been around for many, many years.

Mr. **Kramer**. Let me ask you just one final question. I think probably we need to move on to the next panel. We are working under severe time constraints and falling behind. To what extent do you envision your role in advocacy as trying to change rules under which the Department of Education, for example, operates, or to try to change Public Law 94-142, or the State handicapped law? To what extent do you allocate your activities to those things as opposed to allocating and representing individual situations that develop when children are brought to your attention?

Mr. **Bernstein**. Actually, we just did some studies on that. I don't have the figures before me. But legislative advocacy kinds of things take somewhere between 5 and maybe 10 percent of our time. Somewhere around 70 to 80 percent of our time is representing individuals or classes of individuals, and the rest of our time is spent in the area of speeches, workshops, seminars, educating both the public, service providers, handicapped citizens, advocates, as to legal rights and responsibilities.

Those are the three goals of our organization, individual representation, an educational function, and legislative systems advocacy functions.

Mr. **Kramer**. Thank you very much.

Mr. **Simon**. Thank you. We appreciate your presence here.

[Prepared statement of Awyn Combs follows:]

PREPARED STATEMENT OF AWYN COMBS, CHAIRMAN, EDUCATION COMMITTEE, ASSOCIATION FOR RETARDED CITIZENS IN COLORADO

Members of the Committee:

I am Awyn Combs, parent of a handicapped child and Education Chairman for the Association for Retarded Citizens in Colorado. I want to express the concerns of our organization with the implementation of P.L. 94-142 in the State of Colorado.

One of our major concerns is the fact that the school age children in our state institutions are receiving less than an adequate education and in many cases very few of the related services that are spelled out in P.L. 94-142. In those cases where the services may be provided, this provision is at such a limited level that it does not approximate an "appropriate" educational level. Part of the problem exists because of continuing resistance of either the local education agencies where the institution is located, or by the local education agency where the parents or guardian of the child live, to accept responsibility for the provision of educational services for those children. Each group continues its argument that the other has that responsibility. Although the State Department of Education has issued a directive regarding this situation there seems to be little change coming about.

The second issue is transportation. Many parents are being put into the position of having to fight for that service. One school district will pay the parents to provide the service but mileage is only being paid for one way not for a round trip which is of course required. In other instances the buses for the handicapped are run either very early before, or very late, after all the regular children have been transported. In the event of bad weather, it is the special education transportation that is cancelled, even though regular education children will be provided transportation. The argument given is that it is not right to expose the handicapped to the danger of bad weather. This may have some validity, but we feel that if transportation is provided for any it should be provided for all.

There seems to be a great discrepancy as to what must be included in an I.E.P. Some annual goals are no more than a "will improve" statement. This seems to our organization to be a goal of all education and should not be the statement on an I.E.P. for a handicapped child. The provision of related services is inadequate, and parents are being forced to go to great lengths to obtain those services if in deed they are provided. Sometimes parents are told that the child does need related services, but they are not available in that local school district. Local school personnel are warned not to indicate a need for a specific service because if it is on the I.E.P. it must be provided. This is directly contrary to what we understand to be the purpose of the Act. There seems to be a great void in the understanding as to what constitutes an "objective". The ARC in Colorado feels strongly that there has been completely inadequate direction to the local education agencies from the Colorado State Department of Education on I.E.P. and when the direction was given, it was to the effect that I.E.P. should be kept very general and not get into specific needs and services to be provided. It seems to us a system that insures inadequate services and protects the State Department of Education from being responsible to assure the provision of needed services to all children.

We would also like to see a system developed and adopted by the State Department of Education that will allow a complaint to be made regarding the particular school district if it is providing inadequate services. This should be a system that would allow for agencies to speak to a particular issue that impacts on all handicapped students in that district. A part of this system would then require the State Department of Education to monitor that district and require them to come into compliance.

Finally, we support the comments made by the Legal Center for Handicapped Citizens and the Developmental Disabilities Council. We appreciate the opportunity to make this statement and hope that the future will improve for the educational climate for the handicapped child in the State of Colorado.

Sincerely,

Awyn Combs

Awyn Combs
Chairman, Education Committee

Mr. Simon. Our next panel is Cal Frazier Chief State School Officers; Mr. Jim Wiggins, Director of Special Education.

Our first witness is Cal Frazier, Chief State School Officers, who has also been a witness during our hearings in Washington.

STATEMENT OF CAL FRAZIER, COLORADO COMMISSIONER OF EDUCATION, COUNCIL OF CHIEF STATE SCHOOL OFFICERS, ACCOMPANIED BY ED STEINBRECHER, ASSISTANT COMMISSIONER

Mr. Frazier. Thank you very much, Congressman Simon and Representative Kramer. I'd like to introduce two people who are with me this morning. One is Mr. Bob Dawson who is superintendent for the State school for the deaf and the blind. I would yield probably half of my time to his presentation so we would stay within your timeframe. For questions, I have with me Dr. Ed Steinbrecher who is assistant commissioner and works in this area of Public Law 94-142 and our special education.

Let me begin with just two general observations. In terms of the previous presentation by the legal center, I would like to point out that many of these things that were represented are in dispute. That's essentially why we're in court. And I think there are some facts that I will not go into now. There will be another side presented at a future date in court.

One thing came up at the end that I would point out. There have certainly been many things that the legal center stated that we would agree with. The legal center has played a unique role here. I think one of the biggest disappointments is that as an institution or an agency that receives Federal funds—and I think Congressman Kramer's question was very good—it was disappointing that at one point this spring when he had a chance with a lot of issues pending, we asked to meet with Mr. Bernstein and with the board of the legal center in order to try to go over what we were doing and try to resolve some of these issues. We sent a certified letter and asked for a meeting with them, and this was denied. There was no willingness to meet with the Commissioner of Education and the Director of the Department of Institutions. Rather, about a month or so later, a suit was filed. I think that's an unfortunate thing. An agency receiving Federal funds ought to be obligated to seek that kind of dialog with State officials to avoid litigation if possible.

Let me just summarize my comments here very quickly. One relates to——

Mr. Simon. Your full statement will be entered into the record at this point.

Mr. Frazier. Yes. The point that I want to go back to is that in the Washington hearing, I indicated a feeling that probably we could make some rule adjustments and clarifications and not change the law. I'm not sure anymore this is true in regard to one aspect that you dealt with in one of your questions. I think we come down many times—and I'm speaking now not just for Colorado but for many State commissioners and superintendents that met recently—to one law. I'm not sure anymore this is true in regard to one aspect, that major amending issue: What costs are legitimately educational in nature and, therefore, tied to the related services concept and what things are medical expenditures and basically training and self-help skills? Simply said, I guess its education versus training, and is a question that cannot be lightly dismissed.

If I could then pursue this in light of your question about more Federal dollars. There's no question that if more Federal dollars were to be provided, there would be some new services provided and these would be for the most part in the related services area. I think from the public policy position, the question that has to be resolved is: Are any new Federal dollars simply coming in to replace the dollars that would normally be spent for this child in title XIX, in the social services arena, title I funds that would come through the Elementary Secondary Education Act, or funds normally coming from private insurance carriers?

Because of the related costs, definitions that there are very close to medical services, we're seeing in a national survey insurance companies that are withdrawing from payments for claims that they previously have made. The out for them is that such claims are now covered under a governmental program. I raise this as a policy question to the committee with the hope that Congress will address this issue. Your question was an excellent one. If new money merely allows insurance companies to withdraw millions of dollars that otherwise might come through premium payments then I think you are probably at the nub of a very serious question in Public Law 94–142.

I want to say that without hesitation, at least 25 percent of my time is spent on implementing Public Law 94–142 along with our State special education act. There is a commitment on the Department's part to do this, and I think that's true in every State. I think that for us, it is not a matter of denying services to any youth that are in need. But as to who will pay is in fact a very big issue.

As I represent half a million children, I see moneys that would normally go to the general education program coming in more and more to make up those dollars for related services. I have to be concerned about the other 500,000 children. It is not that we are against providing these services to these children in need.

The second issue that I would just summarize here is one that we have tried to clarify with the Office for Civil Rights, and Bureau of Education for the Handicapped. It relates to the fact that one Federal agency—BEH—has approved an appeal process for a parent to challenge the assessment, placement, and program adequacy in a program. Parents are now finding that they can at the same time go to OCR and file a similar complaint. A local school district then ends up collecting data not just for the BEH local impartial hearing officer appeal process but also for OCR. There is a feeling then that this is double jeopardy.

We have asked OCR to abstain while the BEH local appeal process is in motion. We feel this could be resolved very easily, but OCR has responded that they have to start their time clock when the complaint is filed. Therefore, we end up compiling data for two agencies in the same appeal. I think that's an unfortunate duplication.

My last point has to do with the approval of our State plan. The last review required 7 months even though this was basically an update. There were long gaps between correspondence. We hope that BEH can be required to operate under a faster turn-around schedule.

With that, I'll stop my comments and turn my remaining time over to Bob Dawson, superintendent of the State school for the deaf and the blind.

[Prepared statement of Calvin M. Frazier follows:]

PREPARED STATEMENT BY CALVIN M. FRAZIER, COLORADO COMMISSIONER OF EDUCATION

On October 16, 1979 I addressed The Select Committee on Labor and Human Resources in Washington in regard to the implementation of Public Law 94-142. For this Commissioner of Education, and I suspect most of the 49 others, much has happened in handicapped children's programs in the last eight months. I appreciate the opportunity to update my previous comments with these additional observations.

At one time I felt P. L. 94-142 should not be reopened by Congress and that any changes needed could be done through rule clarifications. I feel this is no longer a valid position. The law has raised serious policy questions and subsequent interpretations by the Court and the Bureau of Education for the Handicapped are pushing state departments of education and local school districts into an impossible box. Congressional intent must be clarified on several key points.

1. What costs are legitimately educational in nature and which ones should more properly be related to medical expenditures and basic training in self-help skills?. Simply stated, what is education and what is training for basic life functions?

This is more than an academic question since the answers that follow from this division begin to identify financial responsibilities. When a profoundly handicapped child is properly assessed, there are needs identified that are clearly educational in nature and subject to 94-142 and the related cost concepts In addition, there are medical and training needs identified and it would appear that these needs should appropriately begin to involve other agencies in the delivery of service to the assessed child.

What has happened, unfortunately, has been a pulling back by other program areas with the claim that the handicapped children's educational dollars should provide for the majority of the child's needs. Likewise, insurance companies appear to have reduced their coverage and reimbursements because of policy statements regarding "governmental benefits exclusion clause." This phrase appears to give insurance companies the right to deny claims that previously would have been processed for reimbursement by claiming coverage is now available under a governmental program. Public dollars have, therefore, begun to flow as a replacement for insurance payments supported by individual policy holders.

Did Congress intend to force states and school districts to utilize special education dollars to replace other federal and state program resources?

I think this is not the case. One would conclude after reading the history of P. L. 94-142 that a shared concept was anticipated in meeting the needs of handicapped children. No one, and certainly not this Commissioner, wants to deny a child needed service. However, as a Commissioner of Education, to protect all children I must be concerned when general education dollars come to be increasingly diverted to meet escalating special education cost through broad interpretations relative to education and related cost.

Because other federal and state agencies become involved, i.e., Social Services and Institutions, it is unrealistic to expect BEH to render the needed policy direction. Secondly, the policy issues involved are of such magnitude that they should not be left to an agency's regulatory powers. Congress itself should indicate the manner in which the costs are to be divided or be willing to shift massive amounts of money out of dollars flowing to other agencies into full funding of the authorized amounts for P. L. 94-142.

2. Conflicts between Office for Civil Rights and BEH regulations continue to irritate states and local school districts. As a part of a state's filing of a 94-142 plan, there must be assurance that each local agency receiving federal dollars to serve the handicapped must have an appeal process involving an impartial local hearing officer to rule on assessment, placement, and program issues. In addition, the state must provide assurance that a review procedure exists whereby a check is made on the local educational agency's compliance with federal law and rules in testing, placement, and serving of a handicapped child.

Parents have found, and sometimes with encouragement from advocacy groups, that additional pressure can be brought to bear on a local school district by going directly to the Office for Civil Rights and bypassing the BEH approved appeal route. Sometimes the approach to OCR is out of ignorance in respect to the local appeal process but sometimes is deliberately undertaken to bring additional pressure on the local educational agency. This in a sense puts the district in double jeopardy. Timetables of two different agencies must be recognized; data must be collected for a hearing officer as well as an OCR investigator pursuing the same complaint.

Although OCR attorneys have indicated that they are often willing to delay somewhat in the processing of a complaint in order to allow the BEH appeal process to work, they also indicate they have no choice but to begin collecting the data and keeping integrity in their own time guidelines. I have asked for a review of this and been told there is nothing OCR can do about this apparent conflict. A very negative feeling, therefore, is directed toward OCR in an unfortunate and unnecessary manner, in my judgment.

Lastly, a comment not included in my earlier presentation would be that relating to the approval of state plans submitted for P. L. 94-142 funding. In submitting our last plan for approval, we waited almost seven months before gaining final approval. Inasmuch as this was an update only, for the most part, we were disappointed that approval of our Fiscal Year 1980 annual program plan took so long.

I wish to thank the Committee for this opportunity to update my earlier comments.

STATEMENT OF ROBERT T. DAWSON, SUPERINTENDENT, COLORADO SCHOOL FOR THE DEAF AND THE BLIND

Mr. DAWSON. My name is Robert Dawson. Generally speaking, deaf and blind adults, parents of deaf and blind children, and administrators of special schools around the country are strongly supportive of the intent of Public Law 94–142 and section 504 of the Rehabilitation Act of 1973. There is concern over some of the basic issues, and of the implementation practices and various interpretations of the law.

I would like to offer several recommendations for consideration. No. 1, I recommend that the term "least restrictive environment" in regard to varying handicapping conditions be clarified. The exodus of deaf or blind children from special schools or other handicapped children from institutions often takes place with more regard for the value of association with nonhandicapped or the physical location in a public school rather than appropriate educational programing for these children.

Often considerations of physical location do not take into account the isolation and communication barriers of a deaf child and the environmental isolation of the blind child. Where placement in a public school may be the least restrictive for some handicapped children, for some deaf children and, for some blind children, depending on their needs, it may become the most restrictive.

The second recommendation is that appropriate education be defined to mean an individualized education program which fully meets all of the educational needs of handicapped children. Too often, the parents of deaf or blind children feel that the services which are afforded fall short of the educational opportunity which is given to nonhandippaced children.

The third recommendation is that the Education of Handicapped Children Act and the regulations should be amended and/or the interpretation clarified in an effort to define the role of special schools for hearing and visually impaired children.

These schools must be perceived in the light of the intent of Congress to expand rather than limit educational opportunities. Through cooperative agreements, the special schools can work collaboratively with local school districts and other service providers. It must be made clear that Congress did not intend to regard special schools as stigmatized nor as a last-resort option.

It is recommended that in the development of their State plans, the Bureau for Education of the Handicapped require that State education agencies reference both day and residential special schools as elements in a circular continuum of service options rather than the least desirable and, therefore, stigmatized placement.

The fourth recommendation is that the Education of Handicapped Children Act and its accompanying regulations should be amended to require the availability of deaf or blind adults to act as expert witnesses at staffings of deaf or blind children. Deaf or blind adults recognize that they may not have a professional background which has prepared them to give expert professional testimony. However, they feel that they have lived deafness. They have lived the isolation which accompanies the communication barrier and the language deficit. The blind adult feels that they have lived blindness and understand blindness better than anyone else.

The recommendation, therefore, is that the expertise of these people who have lived these handicaps be utilized in staffings in support of deaf or blind children.

Finally, it is recommended that the Education of Handicapped Children Act be amended to require that each handicapped child has access at least one-half of the school day to a teacher who has had substantial professional preparation for teaching children with his or her specific disability.

The deaf or blind child is vulnerable to considerable inadvertent damage and may be subjected to instruction which is meaningless unless that special instructor is available at least part-time on a daily basis. Without this special instructor the regular teacher is unfairly subjected to vastly increased liability if he/she does not provide the appropriate program for that child. Thank you very much.

Mr. SIMON. Thank you, Mr. Dawson.

[Prepared statement of Robert T. Dawson follows:]

PREPARED STATEMENT OF ROBERT T. DAWSON, SUPERINTENDENT, COLORADO SCHOOL FOR THE DEAF AND THE BLIND

Introduction

Public Law 94-142 is highly acclaimed as the Civil Rights Bill for Handicapped children and their parents. It must be noted, however, that intense concern exists on the part of many parents, deaf and blind adults, and professionals in the area of education of the deaf and blind regarding both basic aspects of the law and implementation practices based on varied interpretations.

As Superintendent of a special school serving hearing and visually impaired children, I offer proposed amendments to the law itself and/or to the regulations implementing the law and request that congress call for action by the Bureau of Education for the Handicapped to clarify sections of the rules and regulations.

The issues which are raised herein reflect some of the discussions and concerns of the Conference of Executives of American Schools for the Deaf which met in Omaha, Nebraska in May of this year.

Recommendations are as follows:

1. P.L. 94-142 Subpart E - Procedural Safeguards
   Sec. 121a. 550 to 121a. 556

Recommendation: Clarify the term "least restrictive environment" in regard to varying handicapping conditions.

It is recognized that the basic provision of the concept of "least restrictive environment" is more important than the term, however, the provision is often interpreted and implemented in such a fashion that an appropriate education is compromised.

The exodus of deaf or blind children from special schools, or of other severely handicapped children from institutions, too frequently takes place with more regard for the value of association with nonhandicapped children in a public school setting than for appropriate educational programming and placement based on the unique needs of the individual human being.

Frequently interpretations of "Least Restrictive Environment" concept are referenced only in terms of physical location and do not take into account the multifaceted needs of the handicapped and particularly the isolation and communication barriers of a deaf child and the environmental isolation of children who live without the sense of vision.

Placement is appropriate only insofar as it meets the needs of the individual child. Where placement in a public school may be the least restrictive for one child, it may represent the most restrictive and least productive for another.

The concept that an appropriate education must occur in a particular environment violates the constitutional rights of hearing and visually impaired children to enjoy freedom of association and imposes restrictions which are not imposed on other children. The concept is demeaning and psychologically damaging inasmuch as deaf and blind children are told that it is better to associate with non-handicapped children, an action which reinforces the awareness of their difference in an extremely negative manner. In other words, if it is bad for deaf children to associate with other hearing impaired children, or for blind children to associate with other visually impaired children, they are, indeed, inferior to non-handicapped persons as individuals.

2. P.L. 94-142 Subpart A - Sec. 121a.4

Recommendation: Define appropriate education to mean an individualized education program which fully meets all of the educational needs of handicapped children.

All too often, the deaf or blind child is afforded services considered adequate by some staffing committees but which fall short of providing the child with opportunities commensurate with those afforded to the nonhandicapped child to develop to his/her full potential.

The major characteristics of effective educational programs and services to the hearing and visually impaired child should be appropriateness of communication modes employed, the relevance and excellence of instruction or service which is available, and the responsiveness of the social environment in which the education or services occur.

3. P.L. 94-142 121a. 302

Recommendation: The Education for All Handicapped Children Act and the regulations should be amended and/or the interpretation clarified in an effort to define the role of special schools for hearing and visually impaired children.

The parental option to enroll children in these schools must be perceived in light of the intent of congress to expand educational opportunities rather than limit placement choices. These schools must further remain available to meet the needs of the average and above-average deaf or blind child if indeed special schools constitute the most productive environment to meet their unique needs. Resources should also be made available to allow for appropriate programming for deaf or blind children who have educational potential and for whom a special school is the most appropriate setting. Through cooperative agreements, the special schools must also be made available to local school districts and other agencies as statewide assessment and resource centers working collaboratively with districts and agencies in the best interests of deaf or blind children.

It must be made clear that congress did not intend to regard special schools as stigmatized nor a "last resort option".

It is further recommended that in the development of their state plans, the Bureau for Education of the Handicapped require that state education agencies reference both day and residential special schools as elements in a circular continuum of service options rather than the least desirable in order of rank from what is considered the best placement cascading down to the least desirable and therefore stigmatized setting.

4. P.L. 94-142 121a. 344 Participants in Meetings
121a. 533 Placement Procedures

Recommendation: The Education for All Handicapped Children Act and the Regulations should be amended to require the presence of deaf or blind adults to act as expert witnesses at staffings of deaf or blind children. These handicapped adults have lived deafness or blindness and "know their own" and therefore can provide valuable information to staffing committees.

5. Recommendation: Amend the Education of All Handicapped Children Act to require that each handicapped child have access to (at least one-half of the school day) a teacher who has substantial professional preparation for teaching children with his/her specific disability.

The assignment of a handicapped child to a classroom for the purpose of instruction by a teacher who does not understand the nature of the child's disability much less know how to teach the child places both the child and the teacher in an intolerable situation. In such a situation, the child is vulnerable to considerable inadvertent damage and may be subjected to instruction that is meaningless. The teacher is also unfairly subjected to vastly increased liability. Every handicapped child in a school, therefore, must have access to a teacher who is professionally prepared to teach him safely and effectively.

Thank you for the opportunity to share the above-stated concerns.

Mr. Simon. Mr. John Sansone, Board of Cooperative Services.
[No response.]
Mr. Simon. Mr. Jim Wiggins, director of special education.

STATEMENT OF JIM WIGGINS, DIRECTOR, SPECIAL EDUCATION

Mr. Wiggins. I'm Jim Wiggins. I'm director of special education of the local metropolitan school district.

I think the intent of Congress when they passed Public Law 94-142—passed a Cadillac law. However, it has been a horse-and-buggy funding. It has been a horse-and-buggy direction as to what is a handicap, what are related services, what are necessary, and to what extent.

Since the act was passed, to my knowledge we have not received one policy statement from the BEH to give the local directors guidance. The local directors, at this point in time, regardless of the size of the district, are put into a position of dealing with the teachers of the students, the parents, the State department, the Federal Government, legal advocacy groups, anybody that seems to have some question about it. The director is the first one that they're going to hit.

We have approximately, I would guess, a 1,000 pages of rules, laws, regulations, board policies, board procedures that we must follow. Rather than be an instructional leader, the director has turned into kind of a backyard lawyer to avoid the lawsuits, to serve the children, and so forth. I think that the law in and of itself has created many, many responsibilities that are being assumed by the public school that perhaps the schools were never intended to assume.

We heard a moment ago about the child who walks wrong. Is it the responsibility of the public school to work with every child who walks wrong? Pay the bill, staff the child, and so forth? Are there limits to it? If there are, they have not come out from Washington, nor are they present in the local district.

You mentioned: Where is the money coming from? I don't know, to be honest with you. In June 1975, we had approximately 98.31 full-time equivalent staff members. As of this June, we have 195.25 full-time equivalent staff members. That represents about $1½ million in salary alone. That money has come from local district funds, part of it from the State. But it has come from funds, at least half of it, that would have been spent in journal education and those types of programs.

The amount of money that this requires, is it going to supplant? No; I do not believe so. If the interpretations and the desires and the needs of parents are going to be met by local school districts, if the woes of the school-aged child and their families are going to be met legislatively and legally by local school districts, we are going to have to completely redesign local school districts—the roles, and responsibilities.

We transport them. We feed them. We change their diapers. We catheterize them. We attempt to teach them. We provide counseling not only for the child but for the parents and the family. We provide health services for them. There appears to be no end to it. And the question beginning now is: Is there an end to it?

The areas of a speech-handicapped child, the learning disabled child, the emotionally disturbed child is another chaos. From district to district, there are variations. You can be average in one district, move across the street, and you're handicapped. Move out of the State, and you may even be gifted. There is no commonality of services or definitions or programs between students.

We have been laid out a law. Nobody has told us what the law really is. Related services? How much related services is necessary? Is it necessary for the well-being and benefit of the child, or is it necessary for the educational program? What is an educational program?

Dr. Frazier just mentioned a moment ago that we were just informed as a local district that we are not responsible for the assessment, staffing, IEP, and a provision of services for all children in institutions of the State. This is Ridge, Grand Junction, and Pueblo. This one in Grand Junction is 270 miles from our local school district. The next step is: Who is providing the educational program for children in penal institutions? Does that also become a local district responsibility?

There are not funds in our current educational system to maintain this type of service with all of the interpretations that's being given to us. Related services—do we give enough for the child to maximize himself? Do we give enough merely to show benefit from the special instruction? I realize there are problems in any law. But until these things are spelled out, we're going to have controversy, we're going to have dispute, we're going to have parents that are upset, we're going to have children not getting the full services that they require. But some guidance must be given to us people at the local level in order to know what to do and how to do it.

Local boards of education are extremely upset, because they are in the same quandary as their directors. What, how, and who is going to pay? Is education now from birth to 21 for all of the needs? Where is the responsibility of the family? And with that, I'm going to close.

Mr. SIMON. Thank you, Mr. Wiggins.

May I ask you first, Mr. Wiggins, just by way of general background, what your background is, how you came into the kind of a position you're in right now?

Mr. WIGGINS. Yes; I was a special education teacher and regular teacher. I have been a consultant for the State department of education. I have been a director of special education for two districts. I have taught adult basic education in the colleges, and courses in the colleges. I have the equivalent of three master's degrees.

Mr. SIMON. Let me play the devil's advocate just for 1 minute here. I think most of us at the Federal level would like to leave the decision-making as much as possible to the State of Colorado and to your local school districts. But when we mandate that everyone must be served, that includes people in institutions; it includes people who are not in institutions. How you do that, how you effect that, is a decision—we can't come at you from Washington and say how you handle the situation in Pueblo or wherever it might be. And if you say that is a burden that the local school district can't carry, you're probably correct. But then, at least from our viewpoint, this ought to be a burden for the State of Colorado. And we don't need another change in Public Law 94-142 or another directive from the Federal Government to solve what would appear to be a local problem.

Now, what's wrong with my thinking here, or is there nothing wrong?

Mr. **WIGGINS.** I do not think I have been asking for concise, rigid type of direction from Washington. I think what I'm asking for are rule interpretations and expectations so that the State can begin to use them. I do not know, for instance, the legal cost the districts have been put into. Had we had the direction, this money could have been spent on children rather than the attorneys. I think schools have suddenly been discovered by the legal force, that we have money and we'll go to court. I think that what we're looking for is direction but not standardization.

Mr. **FRAZIER.** Mr. Chairman, I think Jim is raising a good point. I would say your thinking is consistent with our response. We have said to the local school district—such as Jim's here in Aurora—that there is a responsibility to assess that child. But inasmuch as these institutions are at some distance, we said that either the Department will provide the money out of Public Law 94–142 to the district to do it personally or we would retain the money, do the assessment, and send the results to the district.

Then after the assessment, the question comes down as to how to serve the child. In Colorado, we will list all of the needs of a child under a student profile. We will determine those needs and services that are educational in nature and fit them under related services. There will be other services that will be medical in nature and we will cover these through title XIX and other sources. We will put together a Colorado plan for serving each child.

You will find each State taking its own approach to this. I think that's all right and should be encouraged. What we need is support from BEH to say that we can package moneys from a number of sources, provide the services, and not just yield to putting everything under Public Law 94–142. The latter would be a mistake.

Mr. **SIMON.** Again, I would note for the record that we have two more witnesses here who are appearing about the lack of response by BEH when that is requested. Let me pursue this funding thing just another moment. And you have in part answered this question.

Mr. Wiggins, you say some funds are diverted from other education programs. The insurance carrier problem is incidentally a growing problem we're going to have to be dealing with one of these days. But aside from that, which is kind of a peripheral thing, if we increase Federal funding, if we double it, increase it by 33 percent, whatever, are we in fact increasing quality services in Colorado?

Mr. **WIGGINS.** My answer is yes. We will have the funding to give these services that the parents and families and children are expecting. They're related services. They are helping the children to go as far forward at maximizing rather than meeting the minimal. The minimal thing is to keep-out-of-court-type requirements of a child.

Mr. **FRAZIER.** Well, I would not be as positive. I'm saying that unless Congress specifies that there is to be a packaging of moneys from all sources we could have problems. If the mental health people hold back and say the first dollar must be Public Law 94–142, all you're going to do is replace mental health dollars, or title XIX dollars, that get redirected to either the very young child or the older population.

There will be no real increase in services to those youth in the 5 to 21 age range unless there is a national directive on this policy question. Unless Congress does this, I would not guarantee an increase in services.

Mr. **Simon**. Finally, I think you may have responded. I think this statement was made before you came in, but one of the earlier witnesses in describing your office described it as—and put BEH in the same category—striving for mediocrity rather than excellence, striving for paper compliance, rather than real compliance. I don't know if you want to answer that further, but I thought you ought to be aware of that statement if you were not here when the statement was made.

Mr. **Frazier**. Let me just give my Assistant Commissioner a chance to respond to that very quickly, because he works more closely with this.

Mr. **Steinbrecher**. Well, I hear that very frequently, as a matter of fact, and I hear it from school districts as well as advocacy groups. I think in Colorado, it's not simply a matter of putting programs into our institutions. The Legal Center some time ago at least threatened suit because we were operating segregated facilities for the handicapped. So in order to improve programs and provide for some of these children, we must involve both the school districts and those people that have the programs which are "the least restrictive environment" situations.

To that extent, someone told me one time we must not be doing the right thing, because nobody is very happy. We have the advocacy groups chiming on us because of the need to do more. And I would have a lot of comments regarding some of the statements made earlier but time won't allow for all of that.

We have districts such as Aurora, Mr. Wiggins, and all of our other school districts indicating we're pushing them too hard, we're removing local control, we're taking away the powers from the boards of education which have been established in our State constitution, and we are trying to move programs for handicapped children too fast. I point out that we're serving over 55,000 handicapped children in Colorado, which I think we're doing in an excellent manner.

Are there individual instances—absolutely yes—in which children do have a problem? If there were not these situations, Mr. Bernstein of the Legal Center certainly would not have to have his position in order to work. But I also point out that these organizations must sustain themselves as organizations, and I can assure you they're not going to do that by telling you what a good job we are doing. So we have had a lot of the reactions.

At times we work very closely with some of these organizations. So overall, I think Public Law 94–142 has been an excellent law. We are providing services to handicapped children who have not had the services before. We are creating an awareness in the population regarding the needs of the handicapped. And I think that has improved over the course of time and will continue to improve. There needs to be more of this awareness, and then we will follow up attending to those needs.

Mr. **Simon**. Mr. Kramer?

Mr. **Kramer**. Will you identify yourself for the record.

Mr. Steinbrecher. Yes. My name is Ed Steinbrecher, assistant commissioner of education for the State of Colorado.

Mr. Kramer. Thank you, Mr. Chairman.

It seems Dr. Frazier and Mr. Wiggins hold at least to some regards the similar views about the necessity for either narrowing or limiting, depending on how you want to look at it, the definition of related services. Would you in conjunction with each other, or separately, at your convenience, send us your specific recommendations in regard to how you would narrow that or limit that given the opportunity? You seem to have drawn a line the way that you would separate what is education and what is medical treatment. And to the extent that perhaps you can give us your recommendations, if they would be those, to in fact narrow the definition of related services at least in terms of the responsibility of the local educational agencies under Public Law 94-142. That might be of substantial assistance to us, especially when we go through the new authorization process.

Mr. Wiggin, could you give me some idea of the total dollars that—if you have this available, or at least a rough estimate at this time, maybe you can provide the detailed figures later on—the total dollars that are available under Public Law 94-142 and section 504. There is no funding under 504. I'm aware of, but there are a lot of things that happen that I'm not aware of.

Relate those to the total school funding for the district, and then relate those percentages to those that are served under those programs and those that will not be served under those programs so we can get some idea of basically what kinds of priority in terms of percentages of dollars spent that you are presently working with in your own school districts.

Mr. Wiggins. I'll try. These are off the top of my head, I would rather not be held accountable for them. The school district budget is approximately $46 million. Special education budget is approximately 10 percent of that. We're probably running about 4.75 millions of dollars. Our title VI allocation is $247,147.

Of this allocation, approximately 70 percent of it is being spent upon the first priority of Congress, and this is finding children who are not now receiving an education. The balance of 30 percent is to improve the services of children who are. So the Federal funds are probably one-eighth of the total funds, a tenth of the total funds that will be available for special education services.

The requirements of the IEP, the various meetings, et cetera, have raised the cost of special education quite a bit. I couldn't give you a figure. But I would say at least probably 10 percent of our total budget is being devoted to special education.

Mr. Kramer. Your total school budget?

Mr. Wiggins. Yes.

Mr. Kramer. What percentage of students approximately have you identified as in need of special assistance?

Mr. Wiggins. We will probably serve approximately 12 percent of the students. The problem being in the least restrictive environment. When we serve a child with a learning disability, we still maintain the regular classroom, the regular teacher, the janitor, the custodian, the art and music teacher. So when we bring the child in for special instruction in this area, that is a cost that is over and above the regular school district's cost. We don't reduce the teacher salary by that one child et cetera. So it's all a supplementary cost really to the regular program.

Mr. **Kramer.** Dr. Frazier, if I understand what you're saying, would you suggest that we specifically put a provision in the law that at least says that all those funds expended under Public Law 94–142 by the Federal Government would be after those paid by third party or insurance companies or something of that sort? If I understand you correctly, you're suggesting that no matter what else we do, that we insure at least a maximum amount of funding that we provide now so in fact we will not be providing replacement funding for someone else, but we insure that maximum dollars get down to the handicapped students by making sure that insurance companies or other third-party carriers, are not allowed to utilize Public Law 94–142 to get out of their contractual obligations by utilizing, in effect, these Federal funds for that purpose. You're suggesting a specific provision in the law to accomplish that?

Mr. **Frazier.** I see no other way to do this at this point. We have explored the idea of school districts actually being able to be the provider of service and bill the insurance companies just as anyone else. There is some provision now in the law that might open the door for that kind of payment. I think we and the Secretary of Education, need to figure out a way to package all those sources so when increases are made in Public Law 94–142 funding, you know you're not going to face this replacement issue. That's really got to be done in the next few months before the funding cycle comes around again in Congress, or you wouldn't have an answer to these questions.

Mr. **Kramer.** Mr. Chairman, do you have any suggestions on the best——

Mr. **Simon.** Well, it is a problem that has been called to our attention. Clearly, the intent of the law and of our funding is not to replace insurance money. It becomes very technical, but it is one of the things we have to do. There's no question about it.

If I may just toss one other—not a question. But if you could send me a response or whatever documentation exists. An earlier witness said 89 percent of those incarcerated in your prisons have been shown to have learning disabilities in Colorado prisons. I would be interested in any documentation that you could send.

Mr. **Frazier.** That would be a study that was made 6 years ago, and we will send that to you. It was a little over 80 percent.

Mr. **Simon.** I would appreciate that.

Mr. **Kramer.** In the same regard, although we're primarily dealing with Public Law 94–142, we're aware, I think, that potentially section 504 is in force, and it might, in some instances, involve some extraordinary cost. And again, I am not trying to circumvent the intent of section 504, but I am trying to find, perhaps, what is a common sense approach to it so that those expenditures are not needlessly made. If you have any thoughts about how those sections of the law potentially might be limited so that we don't lose the beneficial aspects of section 504 and perhaps get rid of some of the potential for some horrendous expenditures to be made by school districts in terms of physical modification improvements that might really be an ediface that no one would actually utilize on a practical basis, so those moneys could be better channeled into some other more productive mechanisms, that would be greatly appreciated.

One other question I do have for Mr. Dawson. I believe, if I understand what you're saying—I didn't have a copy of your statement—what you're suggesting seems like a good idea, at least on the surface in terms of what the least restrictive environment should be. Sometimes in practice either you find the least restrictive environment, as we as lay people envision it, actually becomes a more restrictive environment for the student being served because of his particular handicapping condition. Could you give us some brief remarks as to how the operation of Public Law 94–142 and the least restrictive environment has impacted on your school in terms of declining of enrollment rates, or students that you formerly served who no longer would be served by you but rather by a more traditional educational setting? Also do you think that basically we need to do some—not really rethinking—but some fine tuning in terms of approaching the subject of this least restrictive environment in the authorization and legislation?

Mr. DAWSON. Well, I would say that the——

Mr. SIMON. If you can, use the mike.

Mr. DAWSON. I would say that the population of the school declined once Public Law 94–142 was put into operation. And we found in Colorado as well as it was found nationally that about 4 to 5 years after either the Federal legislation or State legislation regarding least restrictive environment in the Education of All Handicapped Children Act, the population of these special schools began to go back up.

Even though ours is rather slight at this point, we saw that turn just this past year where our population was steadily declining, and we found many parents who did try the public schools and said it is working. They feel very good about the opportunities available in the local district that were not formerly available.

There were other parents who made that effort and had their children in the schools and said, "We feel very guilty about it. We want them home. We want them normal. We felt by putting them there, they would become normal." Some find it is not working or there are social problems, behavioral problems, learning problems, and would like them returned. So we're seeing now students who are older transferring back into a special school.

Indeed, you're absolutely correct. I think there are those who feel that by going to what some consider the physical least restrictive environment, that isolation will not occur and they will automatically interact with their peers. A great deal of psychological damage can be done, and a lot of parents are observing this. The students themselves are feeling this and saying they need to get back into some kind of environment where they can be productive.

I think if we try to say we should do away with the subculture of deafness, the subculture of blindness, we're kidding ourselves. The Kiwanis Club is a subculture. My church is a subculture. Your particular organization is a subculture. And deaf people and blind people need this kind of thing and want me to react and interact with their own.

Mr. **Kramer.** Do you think the operating language under which the least restrictive environment has been couched, that changes need to be made on that, or what are we talking about?

Mr. **Dawson.** I think we need to have some amendments in the basic language or certainly in the interpretations to the rules and regulations, because now there are too many who say we can recognize the term isn't so important, the provision is the important thing. What is the provision? Too often, although we say—and there are those who really give lip service and say we need more than physical location. But indeed in practice, we find in interpretation, you're talking about the physical location and not the total educational environment.

Mr. **Kramer.** Would you also be so kind as to share any specific recommendations that you might have for statutory change with us along those lines.

Mr. **Dawson.** Yes, sir.

Mr. **Simon.** Let me just add one other comment on section 504. I don't think my colleague and I are in disagreement; although, occasionally we do differ on things. That's part of the process. My observation on section 504 is—and we get into some jargon, and we apologize. This is the architectural barrier wall—there is nothing fundamentally wrong with section 504, but in some instances we have architects and others who want to take advantage. And so instead of constructing a simple $300 wooden ramp that can solve the problem, all of a sudden there is a grandiose entrance. But to blame section 504 for that is ridiculous. Or to have an elevator in a building or in a school building, when in fact you just can move a class from the second floor to the first floor. The law is structured in such a way that people need to use some commonsense. I'm sure this isn't true in Colorado, but occasionally in other States I find people who don't use commonsense.

We thank you very much for your answer.

I wonder if our signing interpreter could ask again if there are any here who need assistance.

Mr. Jim Mills, who was scheduled earlier, is now present. We would be happy to have his presentation. We are having a time problem. If you would summarize your statement, your full statement will be entered into the hearing record.

Before we proceed, let me welcome the wheelchair contingency on the left. It is great to have you here. You're getting an idea of what we go through a great deal in Washington. We appreciate your interest today and hope you'll continue your interest in these things, in fact your future and the future of a great many others.

Mr. Mills?

STATEMENT OF JIM MILLS, PRESIDENT, COLORADO EDUCATION ASSOCIATION

Mr. **Mills.** I want to thank you very much, Mr. Simon, and I apologize for not realizing that I was supposed to have been here earlier. I guess it was a misunderstanding on my part.

The organization that I serve as president does have 25,000 members. We have surveyed those 25,000 in various types of surveys concerning especially Public Law 94-142. We also have government positions in our organization. I might mention that those government positions are highly supportive of both section 504 and Public Law 94–142.

I'd like to go over seven basic points very briefly, and I'll summarize those. First is that, in general, secondary teachers, especially secondary, know little or nothing at all about section 504 and Public Law 94–142. There appears to be two basic needs in the secondary education, especially I think the elementary schoolteacher and the system, as this has had better success than the secondary schools thus far.

I think first, though, for perhaps both areas, we need a certification requirement that for any teacher, whether—and that seems to be a very critical need right now—vocational teachers or academic, they need to have certificates based upon what we believe are a few important parts of the teacher's preparation, students teaching in a classroom that includes handicapped, participation in an IEP process, skills for assessing the needs of handicapped students, strategies for behavior management, use of instructional activities for handicapped students, ability to recognize behavior in students which may require referral, and finally participation in the referral process. I believe these should be the part of any teacher's certification requirements to graduate from a school of higher education with a degree in education.

The second basic needs is the one to try to educate those of us—and I put myself in that category—who graduate before Public Law 94–142 or even thought of teaching students with special problems. Every secondary teacher especially, but even some elementary, is left right now with a hodge-podge of in-service programs of varying degrees of quality to become prepared. I think we need to do several things in this category.

Our teachers tend to feel that three things need to be paramount in any in-service program. First, is the released time from classroom teacher responsibilities to take the courses. Some districts have preschool sessions for these classes. They meet in mid-August or early August and add 2 or 3 weeks to the school year and pay the teacher then for that extra training. That is the most ideal.

Second, there should be college credit and/or recertification credit for the classes taken. And finally, there should be extensive involvement by the teachers in the planning and the staffing of such programs.

The second general point—and I'll summarize more in this one. Secondary teachers right now are not involved in case staffings of children with handicaps. We have heard from hundreds of teachers in Colorado that have received students in both academic and vocational classes, and I include myself in that category, without supporting data on the child or the handicap.

When you place a child in a vocational class, which seems to become the place to place handicapped students, without a word to the teacher that the child might be deaf or have difficulty with his sight and then have that child be responsible for handling power tools, for example, you face a critically dangerous situation as well as one that is very frustrating to the teacher.

The third area is that secondary teachers who receive students with handicaps had no opportunity to offer input into the development of the IEP. I believe that is erroneous, false, and does not take into account what the teacher's goals are for the class or perhaps their expertise in developing these.

Both elementary and secondary teachers do not feel prepared to teach students with handicaps who are placed in their classrooms.

Another issue, the fifth issue that comes up, is the least restrictive environment and what are related services. Teachers are concerned because some districts which do not have a program which meets the needs of students will place the students in alternative programs. The districts then refuse to pay for services which the teachers feel should be classified as related services since the districts do not have programs to meet the students' needs.

Six, there is the issue of the right of the teacher to appeal the placement of the handicapped child who is creating problems for the teacher and other students. The legal language protects the parent with due process but does little to protect the teacher. The placement of the child is on the insistence of the parents and supported by the administration. The question seems to be: Is the child being placed for the child's educational advancement or for what is convenient for the administration?

Finally, it is essential that it be acknowledged that the placement of handicapped children in a regular classroom creates unique problems for the teacher. A classroom of 30 or 35 students who are "normal" becomes much larger in terms of teaching load if you add 1, 2, or 3 handicapped children regardless of the preparation or readiness of the teacher. Teachers are in favor of Public Law 94-142 and section 504, in concept, but much needs to be done in the near future to make them workable.

I have just a brief statement then on section 504. I do believe that it would require massive sums of money. I do agree with you, Mr. Chairman, and believe that there are ways of dealing with it that are not as expensive as some architects and building contractors wish. But at the same time I wish to say, as I heard you say, that moving a class from a third floor down to the first floor may work in one instance, but it may not work in all instances because of equipment problems, and so forth, with equipment that's built into a building making it impossible to move the equipment and the teacher stations.

Thank you very much for your attention.

Mr. SIMON. Thank you very much for your statement. Incidentally, your suggestion on precertification programs I've made a note on. I think particularly points A and B you mentioned there would be very easily implemented by States. And it would be a real help for the teacher who comes in.

You say teachers are not offered input into the development of the IEP. Is your experience that the teachers have any knowledge of the IEP? Are they shown the IEP? Are they aware of this?

Mr. MILLS. It varies with the circumstance and the instance. In some cases, neither. They are not aware of the IEP, or they are not consulted—and that goes along with the previous statement I made.

We had a vocational teacher, for example, from Fort Collins who teaches shop, who was not prepared to teach handicapped children because he's had no training in doing so. He has received many fairly severely handicapped children. He is the one I referred to, especially the horror stories of receiving children without knowing even what the handicap was. It may be weeks before he's informed of what degree of handicap a child is suffering from and given any assistance in planning a program at his level to teach that child. He may never have seen the IEP in some instances.

Mr. **Simon.** Mr. Kramer?

Mr. **Kramer.** Thank you, Mr. Chairman.

Some of your suggestions about the nationwide training and ability of teachers under present situations to really totally cope with being involved in Public Law 94-142 and section 504 are good ones. Do you see this primarily as something that should be addressed within the school district or at the State level? Or, do you see the answer coming from the Federal level?

Mr. **Mills.** I think the answer is yes. By that, I don't mean to be facetious. I'm just saying I think some of the problems need to be addressed at each level.

Mr. **Kramer.** How would you go about addressing, for example, the problem of the student teaching with handicapped students, having courses, or at least some preteacher involvement with IEPs and things like that, being able to have knowledge about behavioral manners, things like that? How would you address those at the federal level?

Mr. **Mills.** That is the one probably least necessary at the Federal level and could be handled, I think, very easily by the State Department of Education and the State Board of Education change in certification requirements for teaching certificates. Now the others, 504 for example, I think funding requirements, most local districts just cannot afford that because it comes from teaching programs. You rob Peter to pay Paul, and you end up with a probably inadequate 504 compliance and not enough money left to teach the students well that you have.

So in funding areas especially, I see that all three parts need to be there. I think, too, that one example of Federal assistance and the assistance to teachers that are already teaching would be an already existing program that's woefully underfunded at the national level with woefully short numbers of them existing and that's teacher centers. Teacher centers would be just perfectly suited I believe to provide the kind of needed in-service programs. But until this year and perhaps not even this year, we do not even have a single teacher center in Colorado.

We have a great variety of abilities. Jefferson County, the largest district in the State, has a teacher academy that's similar to a teacher center and I believe has the best teacher in-service program in the State. Teachers help design them. Special ed teachers teach other teachers how to cope with the child in the least restrictive environment. But we can't do that except apparently in our largest districts like Jefferson County, and the rest of the districts suffer.

Mr. **Kramer.** I have one additional question I would like to raise on a matter I would like to bring up briefly. That is there is some indication in your testimony that teachers are not adequately participating in the development of IEPs, or that somehow they're being presented with a fait accompli and involved—it was my understanding that the law mandated that those teachers who come in contact with that student are an integral part of in fact development of the IEP.

Am I not understanding something you're saying, or is there just a very basic divergence between what the law is requiring in this area and what is happening at present?

Mr. MILLS. I believe the latter is correct. I think that in the elementary level, especially in a self-contained classroom, the teacher is involved in the IEP in most instances because it's one teacher. That IEP development can take place much more easily than at a high school level where there are several classes, several teachers. That need to schedule those teachers and planning of that IEP staffing becomes a logistical problem that so far the answer has not been found.

They have all the extracurricular activities that they have to do. Perhaps it's a simple thing as scheduling time to develop IEPs with a number of individuals involved at the secondary level. But it is not happening.

Mr. KRAMER. Thank you very much.

Mr. SIMON. I don't mean to be pursuing this section 504 thing too much. But in the school where you teach, what is this huge expense you run into on section 504?

Mr. MILLS. The school in which I teach at the present time is nonexistent. I'm on leave of absence.

Mr. SIMON. You're on leave from your present position?

Mr. MILLS. Yes.

Mr. SIMON. Where did you teach before you became president of the Colorado Education Association?

Mr. MILLS. The school where I did teach was a one-level school and would have been very easily I think adaptable to section 504. One area that would have been difficult would have been the gymnasium which was down a flight of about 25 stairs from the main floor. It would have been an expensive ramp because of the steepness of the stairs and length of the stairs. An elevator probably would have been necessary there. But other than that, our school with its one level was pretty well designed for handicapped students. But it was built in 1967.

Mr. SIMON. I might add that the Federal level has been on that as long as schools, or whatever the facility might be. They're making progress with the help of I or any other Member of Congress who is on their back. I have to say when I meet with a group of college administrators who say they don't intend to comply with section 504, they don't get any sympathy with me. But the buildings I have visited I found generally that there are some practical ways of solving these problems. Now, sometimes it means moving a chemistry classroom where you have Bunsen burners and so forth down from a second floor or third floor down to the first floor which does involve some expense. But I think if we're practical, we can accommodate the needs of the handicapped much more readily than some of the stories I read about.

Mr. MILLS. I hope you're right.

Mr. SIMON. Thank you very much.

Mr. MILLS. Thank you.

[Prepared testimony of James E. Mills follows:]

PREPARED TESTIMONY OF JAMES E. MILLS, PRESIDENT, COLORADO EDUCATION ASSOCIATION

My name is James E. Mills. I am president of the Colorado Education Association and speak from surveys, governance positions and committee reports representative of our 25,000 member teachers. These teachers are both regular classroom teachers, K-G, and special education instructors and staff.

During the past two years and since the passage of Section 504, we have found there is a host of complex issues in implementing PL94-142 for the classroom teachers in the State of Colorado. Many of these issues can be overcome with the proper interpretations by all parties involved in the issues.

Through a random sample of both secondary and elementary teachers throughout the State of Colorado we identified the following:

1. In general, secondary teachers know little or nothing at all about Section 504 and PL94-142.

There appear to be two basic needs which should be addressed. The first is in the certification requirements to become a teacher. Every teacher and administrator, academic or vocational, should have pre-certification programs which include: a) student teaching in a classroom which includes handicapped students; b) participation in an I.E.P. process; c) skills for assessing the needs of handicapped students in a regular classroom; d) strategies for behavior management; e) use of instructional activities for handicapped students; f) ability to recognize behavior in students which may require referral; and g) participation in the referral process. These experiences and observations should begin early in the teacher trainee's preparation.

The second basic need is the more difficult to address. That is the need, especially critical in our secondary faculties, for receiving the opportunities to acquire those same a) through g) skills and training outlined above. Every secondary teacher who was initially certificated prior to 94-142 is left with a hodge-podge of in-service programs--of varying degrees of quality--to become prepared. While the law mandates such programs, the average teacher finds very little incentive to attend. Either released time is not available or the in-service comes at a time when the teacher is exhausted from an already too busy teaching day.

It seems desirable to have the in-service program offer some or all of the following incentives: a) released time from classroom teacher responsibilities. Some districts have had pre-school sessions for these classes. In this method the teacher should be compensated at the regular per diem pay as the regular contract period; b) college credit and/or recertification credit for the classes taken; and c) extensive involvement by the teachers in the planning and staffing of such programs.

2. Most secondary teachers are not involved in case staffings of children with handicaps. Many secondary teachers have received students in both academic and vocational classes without supporting data on the child or the handicap. Horror stories which are not uncommon of classes

using power tools and equipment receiving students without a word to the teacher of the child's difficulty. To add to this questionable placement of the student, a lack of in-service training for the teacher is not only educationally unsound, it is also dangerous.

3. Those secondary teachers who receive students with handicaps had no opportunity to offer input into the development of Individual Education Plans (IEP).

4. Both elementary and secondary teachers did not feel prepared to teach students with handicaps who were placed in their classrooms.

5. The other issue which constantly causes a problem with teachers is the least restrictive environment and what are related services. Teachers are concerned because some districts which do not have a program which meets the needs of students will place the students in alternative programs. The districts then refuse to pay for services which the teachers feel should be classified as related services since the districts do not have programs to meet the students' needs.

6. There is the issue of the right of the teacher to appeal the placement of a handicapped child who is creating problems for the teacher and the other students. The placement of the child is on the insistance of the parents and supported by the administration. The question seems to be, "Is the child being placed for the child's educational advancement, or for what is convenient for the administration?"

7. Finally, it is absolutely essential that it be acknowledged that the placement of handicapped children in a regular classroom creates very special and unique problems for the teacher. A classroom of thirty or thirty-five students who are "normal" becomes much larger in terms of teaching load if you add one, two, or three handicapped children regardless of the preparation or readiness of the teacher. Teachers are in favor of 94-142 and Section 504, in concept, but much needs to be done in the near future to make them workable.

Section 504, if fully implemented, will require massive sums of money which is certainly not available at the local level. Either the state or federal governments must place a higher priority on compliance--and the funding to achieve it.

Thank you for your attention to my remarks.

James E. Mills, Pres.
Colorado Education Assoc.
5500 S. Syracuse St.
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Mr. SIMON. Our next panel is a group of parents, LaVerne Lietz, Barbara Peterson, F. J. Verhulst, Charles Rohrer, and Ms. Blair.

May I apologize to this group of witnesses. I have to go grab a plane, unfortunately. But our staff is here. I will be getting reports as well from my colleague about your testimony. And I appreciate your being here as well as all the rest of you who are here. I think it's most important that we find out where we are, what we're doing, what our shortcomings are. And I really appreciate your willingness to come.

I'll turn the gavel over to you, Mr. Kramer.

I've been advised I have a little more time, so I'll be here at least the first 10 minutes of your testimony anyway.

LaVerne Lietz is not here.

Barbara Peterson?

STATEMENT OF BARBARA PETERSON, PARENT

Ms. PETERSON. I'm Barbara Peterson. I'm a parent of two hearing-impaired children age 11. We live in Cherry Creek School District No. 5. One of my daughters has a moderate hearing impairment. She is served within the Cherry Creek School District in a regular classroom with special education help from a hearing specialist and from a speech language specialist. Her progress has been very normal. She functions normally. I expect within the next year she will be staffed out of special education.

My other daughter has a profound hearing loss. She has been tuitioned out of our district and is basically served in Littleton District 6 in a self-contained classroom for the deaf. She's taught with the total communication method. The school she attends has good inservice programs. The children all learn sign language.

One outstanding program last year was developed called a reverse mainstream program whereby 2 of the deaf boys were grouped with 10 children with hearing, taught in 1 classroom by a teacher of the deaf. The progress for the two boys was outstanding. It satisfied the social and academic needs of the children.

I drive my daughter 62 miles a day to receive this education that we think is appropriate. It has not been without its personal sacrifice in getting her to and from the program, but we are reimbursed transportation money.

I appreciate the fact that you are interested in finding out how the law is working. We've had good success. We've had some failures with the law. But it's very encouraging. The most frustrating thing is funding for additional staff persons. We're told that hearing loss is a low incident, high handicapping condition. Most of the children are at different academic levels. This requires them to be lumped together, taught at several different levels by one teacher. Whereby, we feel a better solution would be an additional staff person.

We were disappointed to learn that the district had not received grant money they had requested in order to hire additional staff. And as a parent, as I see it, the funding problem is probably the most frustrating. Thank you.

Mr. SIMON. Thank you.

If you will forgive me, Mr. Kramer, because I'm not getting a chance to ask a question later.

I'm intrigued by this reverse mainstreaming. You mentioned the two severely hearing impaired together with other children. You said for the two, this really helped their education. How did the class operate? What about the other children?

Ms. PETERSON. This was a pilot program begun last year. The hearing children in the classroom were volunteers for the project. The parents and the children attended a meeting to find out what was involved. They agreed to it. The class was taught a regular fourth grade curriculum the same as another fourth grade class across the hall.

It forced the hearing-impaired children to keep up with the hearing children. It provided the hearing children an opportunity to learn sign language. They were not forced to learn it, but they chose to.

Mr. SIMON. Was the teaching inside or——

Ms. PETERSON. The teaching was taught with a total communication, both speech and sign language concurrently. And it was most successful. We were really hopeful that that program could be expanded to include the two other academic levels within the total communication program. I'm afraid that it's not going to be accomplished this year, but this is something that we will work toward.

Mr. SIMON. Did the other children learn sign in the process?

Ms. PETERSON. They learned sign. They wanted to. It was not required of them, but they wanted to. It required no additional effort on the teacher's part to teach them all.

Mr. SIMON. If you have any literature, anything on paper about the results of that experiment, I would be interested in receiving it.

Ms. PETERSON. All right. I will talk to the teacher who was unable to come today because she was ill. But I'm sure she would be happy to supply you with that.

STATEMENT OF FLORENT J. VERHULST, JR., PARENT

Mr. SIMON. Mr. Verhulst. Am I pronouncing that correctly?

Mr. VERHULST. Exactly. It must be because you're from Illinois where I was raised.

Mr. SIMON. Where in Illinois, if I may ask?

Mr. VERHULST. Chicago.

Mr. SIMON. I've heard of it.

Mr. VERHULST. I'm a parent of a 15-year-old daughter who has Down's Syndrome and has been served in the Denver public schools.

I'd like to summarize my written statement by commenting initially on the IEP which has been mentioned extensively. And the one aspect that really seems to be overlooked is the fact that the law says yes, the parent has the right to participate and so on in the development of the IEP. But nowhere was it provided for parents generally to receive information that they have these rights.

The department of education involved does not advise the parent, "You have the right to this, that, and the other thing." But the least that they do is comply with the provision of the law that says, "You have a right to attend this meeting which is scheduled at such-and-such a time." That's the limit of their information to the parent. So where is the parent to obtain this information about all these rights that they have under the law and all these services that they're entitled to under the law? The districts do not voluntarily tell them all these things that they're entitled to.

Up to this time, as far as I can determine, it's largely been through the efforts of volunteer parent organizations or other volunteer associations that this information has been disseminated to some parents. But there's still a large, large number of parents who really have no knowledge of what they're entitled to as far as the IEP process.

The IEP is an excellent tool. I think everyone would agree to that. But even after an IEP has been developed, it still boils down to the actual delivery of teaching services in an effective manner. A mere statement, something in an IEP, does not guarantee that those services will be provided.

And probably the most urgent need I think in the area is to see to it that there is an adequate funding for teaching services. In other words, the teacher ratio should be improved so that there are not 10 to 15 students in a special education class with 1 special education teacher who cannot possibly serve the needs of those children adequately with that kind of a teaching ratio. So unless the funding can be improved and channeled so that it actually results in teaching services to the child, the effectiveness of the IEP just goes down the drain. It is just something on paper.

I'd like to comment also on least restrictive environment. Our specific experience with that in Denver was that special education students at the elementary level, which includes up to level 6 in some cases, at least in our case, the special education classroom was placed in a grade 1, 2, 3 elementary school. When this was done, we lodged a complaint with the Department of Education. They took note of it, but the situation still exists.

The result has been that when our child was moved from the elementary level to the secondary school level, to the junior high level, she had been for 3 years operating in an educational environment with the maximum of a third grade level normal child and treated just like those children. Suddenly she's placed in a seventh grade junior high school environment where the children are much older, they change from one classroom to another, they operate much more independently and so on. Then everybody wonders why the child cannot function adequately in that environment and said, "Well, why was she put here? She's not ready for it." And yet they have not faced up to the least restrictive environment in a practical way by putting the special education class in, say, grade 1 through 6 elementary school which are also available in this system.

In the comments of the previous witness, particularly on the hearing, they mentioned this least restrictive environment. I would like to ask that the subcommittee act very cautiously in trying to change the language of Public Law 94–142. If a parent sees that their child is not functioning—first of all, least restrictive environment, as I understood it under the act, also assumed that certain support services would be provided if they were necessary. You can't just take a child and dump him into a least restrictive environment situation without seeing that he's prepared or supported in some way. And if a parent sees that their child is not receiving effective education in a certain environment, they'll be the first ones to acquiesce in the placement of that child in another situation where they can receive more services in a more effective way. I would like to caution the subcommittee against trying to deal with that situation in a more restrictive way.

The other comment I'd like to make is on the package funding that Mr. Frazier is talking about in which, as I understood him, he would say that when we staff this child, we would say, well, maybe we can take this part of it and fund it under Public Law 94–142 and this part under title XIX and this part under something else. This would seem to be very dangerous and possibly result in a child not being served properly because of the shuffling of funding or shuffling of programs and program restrictions.

It would seem that a more ideal solution would be to deal with the various agencies involved to assure that we do not have all these various titles which constitute little pockets of funding and try to consolidate the funding in a more realistic way so that these States and local people are not faced with an administrative nightmare in trying to match up moneys with people.

And finally, I'd like to comment on the special education advisory committees which are provided for under the law. I would like to recommend that some provisions be added which more or less take these committees and make them more independent of the special education departments. Too often these committees, they're appointed by the special education department, they're closely monitored by the special education department, and nothing constructive or controversial ever sees the light of day because they're so strictly controlled that their efforts to improve special education are really thwarted. Something needs to be done to take them out from under the thumb in fact of the special education departments. That's all I have.

Mr. KRAMER. Thank you very much, Mr. Verhulst. Let me just make one comment to what you said about the multiplicity of funding sources. This is a very serious problem which you pointed out and one rampant throughout all of Congress and not certainly in any way isolated to special education.

One of the very difficult things about this, of course, is that in my initial indoctrination, you find a very tight jurisdictional scheme of things within a variety of committees. Each one is very reluctant to turn over any authority it has garnered over the years to any other one. Consequently, many programs emerge out of different committees, and each one has title to authorship related to it.

My experience is, as a result of this, it's been very difficult to consolidate in any meaningful programmatic way simply because they have not really been preplanned as to how they have been developed. But one was already ongoing, and then somebody else wanted one in his or her name and may or may not even be aware of the existence of another program.

We had a domestic violence bill that came through our own committee not too long ago. And at the time that occurred, research indicated that there were already about 13 departments involved in some aspect of that. We were able to identify 30 separate programs. So you're absolutely correct, and it is a problem that is there and needs to be dealt with and has not been dealt with successfully as of this time.

Your comments on being cautious in terms of making definitional changes about least restrictive environment are helpful, and we're certainly happy to have those. You certainly seem to be very much up on what this law and the other laws provide. Thank you for coming today.

[Prepared statement of Florent J. Verhulst, Jr., follows:]

PREPARED TESTIMONY OF FLORENT J. VERHULST, JR., DENVER, COLO.

Although Colorado has a good law providing for public education for the handicapped, it has been very helpful to have P. L. 94-142 together with the implementing regulations. The regulations in particular are much more extensive and specific than those provided under state law and are very valuable when trying to obtain needed services.

My child Julie has Down's syndrome and is mildly retarded. She is 15 and for the 1979-80 school year she was in grade 7 in the special education class at Merrill Jr. High in the Denver Public School system. Julie was not adequately prepared to function in the junior high school environment. Specifically, she was not able to get to and from different classroom, lunch, and gym on her own on time, and could not operate a combination lock for her lockers. She was also not able to function with or relate ot other students her own age. She had been attending the special education class at Ellis elementary school for three years. Ellis school has regular grades one through three. Therefore the special education students up to age 13 and 14 are being kept in an environment with much younger children. Several years ago we requested that the special education class be located in a grade one through six school so that the students would be in an environment with their age group peers. No action has been taken to improve this situation.

The IEP is an excellent tool but I and other parents have found it difficult to obtain effective results. For example, Julie's IEP for 1979-80 was prepared during the annual performance evaluation at Ellis school in May 1979 even though she was to attend Merrill Junior High in Sept 1979. The curriculum for Merrill was not known and the objectives and goals stated were very general. No one from Merrill Jr. High was at the meeting. In the fall we learned that the curriculum for the special education students is set by the Special Education office and is the same for all the students. This makes it very difficult to establish an individual program based on a students needs. In October 1979 the special education teacher at Merrill added some specific goals to the IEP without consultation or advising us even though we had visited the classroom and expressed our interest in her program. We learned of this action in March 1980 when we requested a copy of her school records. Some of the specific goals that had been set were meaningless repititions of learning skills Julie had mastered in previous years as documented by prior IEPs. From our observation of the classroom it was evident that the same subject matter material was being given to almost all the students. The only semblance of an individual program was in certain instances when worksheets were used. There was little or no individual instruction to improve the students skills.

None of the provisions of law and regulations can be effective unless the actual delivery of teaching is improved. The most direct means of doing this is to provide more teaching staff and better teaching materials designed to meet the needs of special education students. For years we have been told that our child learns best on a one to one basis. The staffing in the Denver schools does not even permit many special education teachers to have an aide and their pupil load is usuall ten to fifteen students. Perhaps some funding restrictions could be established to provide that some minimum percentage of the federal funds must be spent for additional teachers, aides, and other personnel directly involved in teaching, and for special education teaching materials.

Some regulatory provision should also be added to require the establishment of the Special Education Advisory Committee on an independent basis so that these committees can operate in a more vigorous and constructive way in their efforts to improve Special Education. Experience has been that the Special Education Dept. controls the selection of the members, the activities of the committee, etc., and sees to it that nothing controversial or critical of the Dpt gets acted on.

We will continue in our efforts as individuals and members of parent groups to improve the quality of education provided to handicapped students and deeply appreciate the interest of this subcommittee in trying to learn how the Law is actually operating.

Florent J Verhulst Jr.

Florent J. Verhulst, Jr.
735 Monaco Parkway
Denver, Co 80220

Mr. Kramer. Now, I'm not quite sure who else we have that we haven't talked to yet.

Ms. Blair is it?

Ms. Blair. Yes.

Mr. Kramer. Is there a Mr. Muth?

Mr. Rohrer. Mr. Rohrer.

Mr. Kramer. Is there anybody in the audience that was scheduled to testify by the name of Muth anywhere?

Unidentified Voice. There was, and somebody has his testimony. I heard them say it.

Mr. Kramer. So he or she is not still with us?

[No response.]

STATEMENT OF MS. BLAIR, PARENT

Mr. Kramer. Ms. Blair, would you share with us your comments and testimony, please.

Ms. Blair. I'm speaking to you as the congressional subcommittee and also as my own representative. I'm the mother of a 5-year-old moderately retarded child. I would like to say this: It's hard enough being the parent of a handicapped child. But to have to fight for the education is not necessary, and it puts an extra burden on the parent that should not be there in the first place.

I am appalled at what was said and the testimony given by the panel from the educators. We have no choice. In my district or in the State of Colorado, I know of no private school that will educate moderately retarded children. So my only choice is to my district. My district has no program that I deem necessary or appropriate for my child. Definitely they will purchase services from other——

Mr. Kramer. What district are you?

Ms. Blair. Cherry Creek District 5. They said they would purchase services. And they will purchase services through community service boards. And if I don't feel that is necessary or appropriate, they said there was no choice. I said what about Littleton district that does an excellent job of educating their special students, and they said they didn't think the district, Cherry Creek, would purchase services from other districts. So that is yet to be solved.

But one of the comments that one of the—"educators"—said was that it was hard to get funding. Well, I can't understand why some school districts such as Littleton can have all the funding whereas other school districts such as Cherry Creek, which I assume is just as rich from the county base, cannot afford to educate all their handicapped children. And the way I understand the law is that they're supposed to go by the needs of the child and not make the child fit into the school district's existing programs.

Another thing I want to comment on——

Mr. Kramer. Have you discussed that with the administration of the school district?

Ms. Blair. I have. And they want me to wait until the new acting director comes in, until after July 1 when the new director will take over. The present one doesn't want to get involved in it.

Mr. Kramer. And it's been an ongoing dialog you've had?

Ms. **Blair**. No. He's only 5 years old. We're just starting. I have a long way to go.

The district, the local school, the new elementary school, it's just beautiful, beautiful carpeting, the walls are colorful. I go into schools where they have retarded children, and the walls are bland. It seems that they give the retarded children what they don't need. They give them second best. It's just what's left over, what no one else needs. That's where they put the retarded children, and that's not fair. It's not right.

Some of the classrooms—I visited maybe 10 programs for retarded children. Some of them you walk in, and you really get the atmosphere that it's an academic program. That's what we need. We don't know what these children's potential can be unless we try. You go into other classrooms, and I get the impression that it's strictly babysitting. They're there to keep them occupied for the 6 hours or 4 hours that they're there, then they send them back home. They do as little as possible. They're entertained, they do little crafts. But I don't know if they're really educating the children. I don't think that's appropriate or correct.

I don't know what this education subcommittee can do in Congress. I don't know what's wrong with Public Law 94–142 or what's right with it. All I know is these children's needs are not being met in Colorado. After listening to some of these people, I don't think our educators are really—they should be concerned with each child's needs, and I don't think they are sometimes.

Mr. **Kramer**. You're basing this on your——

Ms. **Blair**. On my own personal experience. I don't know what other parents have felt.

One thing about the IEPs, my child has been in different programs for 4 years. I never knew how important the IEPs were. No one ever sat down and told me if I didn't sign, this would happen. This is what we want for your child, and I agreed with them. This is obviously what you want. But I never knew I could request certain things.

The ARC, Association for Retarded Citizens, put on the child card and explained the IEPs. I considered myself a concerned parent, so I tried to seek these things out. But I was appalled no one ever told me these things.

That's about all. Oh, one thing. The gentleman——

Mr. **Kramer**. What grade is your child in now?

Ms. **Blair**. He's 5 years old. He will be school age this coming fall.

Mr. **Kramer**. Now, he's in a program right now?

Ms. **Blair**. He's been in a preschool program.

Mr. **Kramer**. That's run by a school district?

Ms. **Blair**. No. It's run by the community service boards. And it's been an excellent program. But one gentleman was saying how much it costs to educate handicapped children. Well, this pay me now, pay me later, it costs a lot less to educate them now than it does to put them in institutions and keep them the rest of their lives.

They do 10 percent of the budget and educate 12 percent of the handicapped children. You know, that's below par in itself: 2 percent is a lot of money when you're talking millions of dollars. It's going to cost more to educate handicapped children than it is a normal average child. It's going to cost more, there's no question about it. But it pays off in the long run. They don't put a strain on society when they get older if you educate them now.

Mr. KRAMER. Thank you for sharing your experiences with us and being with us.

STATEMENT OF CHARLES E. ROHRER, PARENT

Mr. KRAMER. Mr. Rohrer. Is that how you pronounce your name?

Mr. ROHRER. Yes; that's right. Mr. Chairman, I'm Charles Rohrer from Boulder. I have a mentally handicapped child in the Boulder Valley School District. I'd like to make some comments in accordance with the outline of the testimony I have here. I apologize for not having a complete statement, but I only heard about the opportunity to be here on Wednesday. This is as good as I could do.

Mr. KRAMER. How old is your child and what grade?

Mr. ROHRER. My child is at the present time 10 years old, and he has been in a variety of schools within the Boulder Valley School District. He's currently within a class for significant limited mental capacity which means educable mentally retarded in educator's language. And in the past, he's been in schools for trainable mentally retarded, to use that language.

I'd like to comment on the law itself, Public Law 94–142, and its intent. This law is responsive to the court decisions which condemn discrimination which was practiced by school districts perhaps 100 years or more against handicapped people in this Nation. We should never lose sight of the fact Public Law 94–142 and section 504 are not the last word. If these laws did not exist, our children would still be entitled to a fully appropriate education to meet all of their needs under the Constitution of this land.

If the Federal Government provided no funds to the State of Colorado, the State of Colorado would be under a constitutional mandate and the individual school districts within the State to educate our children in a proper manner. If they do not do that, a parent can bring a suit in the Federal court under the Constitution, have a Federal court run the school district the way they have in many other civil rights situations regardless of whether or not we are meeting related services or whatever under the specific laws.

I'd like to comment that these laws passed in response to those decisions were intended to make it unnecessary for parents to take contitutional action in State after State after State. Let's do it once for the whole country.

Incidentally, the basic decision here on this came in 1972. We've made a good bit of progress from 1972 to 1980. These laws are certainly in accordance with the desire of the American people to eliminate injustice against handicapped people. Sometimes I think in the discussions about money, our school administrators forget not only the fact that it's a constitutional base that we're talking about, but it's an injustice that we're talking about. The American people don't want that.

"I don't care if it costs money or not." The people I talk to say that. "We want your child educated the way he should be in accordance with his needs. It may cost money, but that's what we want." I'm talking about parents of nonhandicapped children.

I must congratulate you and the Congress on the construction of Public Law 94-142. It's one of the most unusual laws I think I've ever seen in a welfare area. As a person of conservative bent myself, I have a strong distaste for bureaucracy, governmental bureaucracy of any kind, taking away my freedoms and the freedoms of my child. I think that's basically a conservative proposition. This law is one of the most beautiful examples of welfare laws which avoid that trap.

I've listed two items here: Money is provided to school districts—the Federal bureaucracy does not dictate how it's going to spend those moneys. We have in our special education advisory committee in our school district the opportunity to instruct our school district on those priorities that we on the committee see with respect to how this money is to be spent. I think that is a very positive manner of constructing laws. And I think on any laws, welfare laws, that you are concerned with in your days in Congress, you might keep that kind of approach in mind.

Most important, this law gives power to the ultimate recipient of the benefit, that is the handicapped person or the parents of that person, to participate in the decisionmaking process on how the education is to take place.

Now, isn't that a beautiful concept for you and Congress to give to us parents the right to participate in decisionmaking on how our children are to be educated? It wasn't necessary back when public school systems came into being in New England back in the early days. The community got together and hired a teacher, and that teacher lived up to what the parents wanted. But within our current massive societies, we have to have school systems.

It takes Congress to come back and give power to the parents to participate in the decisionmaking that previous to these laws has denied any education to at least the more severely handicapped in our population. So thank you for constructing the laws in that way.

The law provides a non-Federal complaint procedure; that is, the hearing procedure under Public Law 94-142. And it also provides under section 504 a Federal investigation of parental complaints. In my opinion, most of these complaint procedures are neither—I believe we should have a self-help procedure whereby the parent can make his own case. And that's what we have under Public Law 94-142.

But there are a great number of problems with it. They were mentioned here already. You probably will need an attorney in order to make your case well. But nevertheless, it is your case that you're able to make. When you go to the Office for Civil Rights, they investigate and they make the case and see whether or not they think there's a law that has been violated. And true enough, they might talk to you, the parent, but it's essentially their ball game with school district bureaucracy. I think that this way of going about it is also very important for the simple reason that not very many parents are going to undertake the emotional trauma and difficulty of going through a Public Law 94-142 hearing procedure.

The OCR investigation is a much simpler way to go. The OCR will not hear every complaint that a parent has. They like to zero in on procedures rather than specific educational problems for a certain child and will usually refuse to accept a case from a parent which is too detailed in my opinion.

My summary on the law itself is it is constructed to give power to people, primarily parents, so that historical injustices can be remedied, very importantly to guard against the wasting of taxpayers' money by the continuance of the poor education. I don't see any point in spending a dollar on education, whether it be the education of regular kids or special kids, if poor education is a result. That's a waste of money. There's no point in spending $2 million on special education if the result is classrooms with 50 people in them and the IEPs are not met. Let's spend the extra half a million or whatever it is to hire the additional teacher and have good education, and then none of the money is wasted.

I believe that what you have done in Congress is provide the kind of power to parents that you're providing in this law to review programs and to review the environment in which the child is educated and to make decisions and protest if you don't like it. It is probably the most important thing you can do to guard against the waste of money.

The implementation of the law itself, I've seen improvement in some school districts since 1972 and the Colorado Act has improved the manner in which they have educated the special children. The Boulder Valley School District has gone from very little education for special education kids in 1972 to a very considerable program at this time. In Boulder County, we have two school districts. The St. Vrain Valley School District in the northern half of the county has done very little to improve special education since 1972 and 1975 before Public Law 94–142 came up.

It is my belief that school districts ignore the law when many expenditures are involved. I mentioned before that people who I talk to want money spent to have handicapped children educated in the right way. But I don't get that same line when I talk to school district administrators or school district attorneys. They're faced with the money expenditures that are involved in educating handicapped people. Some school districts have been willing to expend and expand programs, and other school districts are doing practically nothing.

I believe that increased Federal funds are of help. I don't see how they cannot be. Increasing the State funding would be of help to enable school district administrators to overcome their hurdles here. Most importantly though, I think the withdrawal of funds by State or Federal agencies who are called upon to review school district compliance with the law would be most important in getting them to move, and that's not being done. I don't see the Bureau of Education for the Handicapped, I don't see the State Department of Education withdrawing funds from any school district in this State, and there are some of them that are doing damn little. The effective approach that I see occurring at this time is litigation by parents.

Now, on the interpretation of the law to subvert the law, part of my outline here, school district administrators and their attorneys in my estimation border on scoffing at this law which says that we will educate handicapped people in accordance with their needs. These people are educating handicapped people in accordance with whatever they view the amount of money they want to spend, not in accordance with children's needs. Those school districts that are inclined to obey the law are spending quite a bit.

Those school districts that are inclined not to, try to imagine every kind of loophole they can in the law to avoid it, how to avoid the law and avoid spending money, lack of concern about the basic injustices involved is part and parcel of the school district administration that we have in this State.

This specifically involves school district attorneys. Since I'm an attorney myself, I'm very disappointed in the comments of school district attorneys which indicate to me that they advise their clients in such a way that they are not complying with the spirit of the law at all. The advice that they give to their client is to seek out the loopholes in every way they can to avoid complying with it. If I believe the part and parcel of their duty as a school district attorney, public entity, public agency, is to include representing the citizens of the community rather than these narrow dominated interests, views, of school district administrators.

Here are some examples of loophole interpretations that I've run into. I've been recently told that various school district attorneys are stating that the amount of local money which the school districts need to spend on special education need not increase above the amount of school district spent in 1977 which was when the law was implemented. If you examine the law, you may find out some basis for their loophole interpretation. It's not in accordance with the interpretation of the law and with the Constitution of the United States.

Mr. KRAMER. Is that the State law you're talking about now?

Mr. ROHRER. I'm talking about Public Law 94–142. It was implemented, I believe three regulations in 1977, and there are statements in the law that local moneys will not be supplemented by Federal moneys. And there are some attorneys who are interpreting the law to say the amount of money spent in 1977 and after that, it's all Federal money. I'm also concerned about State standards.

Mr. KRAMER. Has there been any litigation on that point?

Mr. ROHRER. That is a brand new point that I've just been made aware of. And certain school district attorneys are now advocating that. That is an invitation to litigation. If indeed school administrators and school boards adopt such a position, it will be litigated, and taxpayers' money will be spent in that fashion.

Mr. KRAMER. Has there been any determinations that you know of made by the State Department on that issue?

Mr. ROHRER. Not at all. As I say, this is a brand new idea to me. I just ran across it within the last couple of weeks.

Mr. KRAMER. I see. Would you keep the subcommittee posed on what you find in this regard?

Mr. ROHRER. If something happens in that area, I'll let you know.

There are State standards in this State for determining, for example, maximum classroom size in the education of children with a certain handicap. There is a provision in Public Law 94–142 for State standards to be relied upon. Now, therefore, the reliance on State standards is not totally out of sync with the law at the moment. However, the basic idea of the law is that we're going to provide appropriate education in accordance with the needs of the children.

The point I make is that State standards, which establish, let's say, a classroom standard of maximum of 12, may not in an individual classroom instance meet the needs of the children. That is to say that the chemistry of the class is at stake.

In some instances, a class that has a maximum of 12 in it will be okay. It may even go over that and still meet the needs of the children. In many other instances, because of the teacher, because of the children in the class, maybe one has a multiple handicap, perhaps the functioning levels of the children are too great in the case of mentally retarded kids, 12 is far too many.

Bureaucratic approaches should not be adopted. It is the subjective appropriateness of the education to meet the needs of the children that should be the determining factor on whether a class is going to meet the needs of the children. That's a problem that's a loophole in the law, and you may want to consider some sort of amendment to the law in that area. I'm not against State standards, but the fact is that appropriateness and meeting the needs of the children is the basic idea. And if reliance can't be placed on the bureaucratic approach when the real standard of the law and ultimately the Constitution standard is something different.

Here is a specific loophole that has given me a great deal of concern. Section 615 of the law states four procedural safeguards which are given to parents. In that section, the parents are provided the opportunity to receive prior notice of any change in educational placement. They are also, in other sections of 615, provided the opportunity to maintain a then current educational placement if they're not satisfied with the change.

I found in our school district that they equate educational placement with program rather than environment. In my opinion environment is clearly the proper interpretation of the statute. By equating educational placement with the program, they reached the determination that once a child is placed into a program, they can move that child wherever they want, place him anywhere within that program. Whatever the environment, it makes no difference. The law doesn't provide for any opportunity for parents to complain about the environment.

So in the specific case I had where we had a classroom which was doubled in size from one year to the next, and I thought that was a significant change of environment that I ought to be able to be apprised of with prior notice and an opportunity to protest it ahead of time, I was given none—no prior notice, no opportunity to protest ahead of time—because they equated educational placement in the law with program.

Now, I have a letter attached to my outline which fully sets forth this issue, the facts and the legal interpretations that I believe are important. I think that it would be an advantage to everyone to have educational placement defined in the law as the educational setting in which the children are to receive their program. That is obviously what is meant by the law, and it's only a loophole interpretation I think that has created this trouble. But it'll occur in other States and other districts as well as Boulder Valley.

Mr. **Kramer**. No Federal regulations in place that bear on that issue?

Mr. **Rohrer**. There was not only no definition in the law, the regulations were of no help at all. In fact the regulations muddied the water. The word is used once in the law. In the regulations, the word is used several times, and it's used in both respects. Regulations speak in some places in terms of placement in the programs, and in other places the regulations speak in terms of placement in the educational setting.

I brought this matter to the attention of the Office for Civil Rights, and I'll see what they do about it. Perhaps I'll also be bringing it further up the line, depending on what our results are there. There should be an approach made to this either by the Department of Education or by the Congress to straighten it out.

It's my experience that there has been an encouragement, it seems to me, in the use of big generalities in IEPs. And I tend to see the hands of school district attorneys in that. In order to avoid parental complaint that the IEP is violated, you can't very well complain about an IEP objective that his reading comprehension will improve. What you need are specific objectives in IEPs. For example, Lerner will follow the two-step note, read and follow a two-step note. That is some example of a specific objective in which you can truly measure whether there's been progress.

Other problem areas. I believe there is continuing discrimination occurring, a section 504 problem. I've listed what I think are three of them. Special education classrooms are provided wherever space happens to be available. It's my experience that the school district looks around and sees where they have empty classrooms after the regular kids fill up the rest of them. And then they place the special-ed kids in those classrooms. That can mean a child is moved year after year from one school to another so that in an elementary education comprising of 6 years, the child may be at several different schools during that course of time. That to me is a clear discrimination.

I think that it's hard enough for a regular child to move around from elementary school to elementary school. It's no better for a special ed child. We need to have certain classrooms appointed for certain handicaps in certain schools so that the parent can view the program and know that his child will be there for the entire 6 years of his elementary education.

I see some school districts failing to provide established classrooms. I mentioned the St. Vrain School District. They have been sending their children, bussing their children, into the Boulder Valley School District, the more severely handicapped ones, because they don't want to establish their own. That's OK. In the legal sense, it's OK. But it's not OK forever, because sooner or later there is a pattern of discrimination which has arisen from that. It's fine to—assuming you have a large number of children, which the St. Vrain Valley School District does; they're not a small rural school district that needs to depend on an urban school district for services. They just don't want to establish classrooms. Sooner or later that will be a violation of section 504 even though Public Law 94–142 is allowing them to do it.

Unduly long bus rides have a problem. In the case of the kids in St. Vrain Valley, some of the kids are bussed 2 hours one way to get down to Boulder Valley for education. I thought that was terrible until I found out there were some kids in Boulder Valley getting bus rides.

I've listed here unfairness in the Public Law 94–142 impartial hearing procedure. I listed that even though I have not fully looked into that to know all of the areas about which complaints should be made. I listed hearing officer selection. In hearing officer selection, the only one we've had in Boulder Valley—Boulder Valley appointed that hearing officer.

The parent had no say in who the hearing officer was to be. The hearing officer they appointed was a school district administrator. I recently obtained a copy of all of the qualified hearing officers, a list from the State Department of Education. There were 15 of them. Some of them were school district administrators. None of them were parents.

I listed here as a problem the weakness of the State Department of Education; specifically, failure to rely on their authority under Federal law. Now, we've got a problem over in Wheat Ridge, and there's been a suit filed relative to the waiting list thing. The children there haven't been educated for the last few years because the school district couldn't agree on who was to pay for it. Why didn't the State Department of Education step in and solve that problem?

I suppose the school district attorneys came around and said, "You don't have authority to do it under the Colorado constitution, under the laws of Colorado." Never mind the fact that children aren't receiving an education and that there's injustice occurring to these people; never mind the U.S. Constitution; never mind Public Law 94–142.

And the State Department of Education said, "Gee Whiz." And now we have a lawsuit as a result. That, again, I think is a failure of the State Department of Education and school district administrators to outrule them, the State, recognize the constitution based on the entire system, based on the needs of the children. I can go off in all other directions that are really fatal to service in this State.

I think if their attitudes were changed, we'd have tremendous progress. We don't need a lot more money to have tremendous progress. Money will help, but change in attitude is basically what is needed.

Weakness of the Federal agencies, their regulations, and their enforcement. I mentioned to you the muddying of the water of the regulations that BEH has promulgated in the use of the word placement in two manners. I'll know more how weak they are in enforcing the law when I'm done with the Office for Civil Rights, again in the letter I've attached to this.

Weakness of advisory committees was already mentioned. In our school district, the advisory committee is appointed by the superintendent of education. About half of its members are school district employees. When word comes down from the superintendent or deputy superintendent that certain action should be taken or not taken, the motions are made and they're passed very promptly.

The information that the advisory committee receives is only that information which the administration wishes to be. The people that are appointed to it, the parents that are appointed to it, are generally selected on the basis of their happiness with the school district, in my opinion. I don't want any happy people to run it.

That concludes my testimony, Mr. Congressman. Thank you.

Mr. **Kramer**. I'm certainly happy to have that in the record. It's given us a lot of points to mull over and to consider, a lot of detailed reactions that you've had in your own involvement with some of the day-to-day operations with the way these statutes and State agencies and school districts interrelate.

I assume from your testimony, which is obviously quite knowledgeable about the law and its interaction, that you have been involved in some of these handicapped groups around the State of Colorado I would imagine. Could you share your memberships with us or what groups you have been associated with or are associated with or are an officer in?

Mr. **Rohrer.** I'm an attorney with the IBM Corp. in Boulder. I've been past president of Boulder County Association for Retarded Citizens.

Mr. **Kramer.** Thank you very much. I'm glad to have your comments, and we'll certainly give them scrutiny. I hope you feel free at any time you like, when you have additional comments to make, to relay them to Washington, D.C., to our subcommittee. We'd be happy to have them.

One thing I'd like to ask you briefly. We are running behind. But you mentioned the attitude of the State Department, in particular not a big question necessarily of funding or not having enough resources but strictly an attitudinal thing. Could you comment on that briefly for us in terms of what you have found in your relationships with the State Department?

Mr. **Rohrer.** I don't want to pick on the State Department. I think perhaps out of the various educational agencies in our State, the State department, may be one of the better ones from an attitude point of view. But school districts themselves, the individual school districts, really are where you run into problems. My attitudes—you can see them in the comments here today where the basic emphasis was on: Do we have the money to do this, or do we have the money to do that, what do we mean by this, what do we mean by that, we need more regulations, we don't need more regulations, instead of focusing on the very simple understanding of what we're all about here; and that is, the appropriate education to meet the needs of the children.

I don't see that we need a whole lot of laws from Washington, or a whole lot of regulations from the Bureau of Education for the Handicapped, or a whole lot of guidance. I think we have all the guidance we need. The school district and the parents need to sit down and determine what's appropriate to meet the needs of the child.

The problem is that the administrators are failing to accept that this is basically a constitutional underpinning and meet the needs of the child. They didn't do it for the hundreds of years prior to 1972, and they just can get it through their skulls that they can't practice injustices any longer. It's an attitude that seeks loopholes and seeks a way not to do it rather than a positive approach, let's do it.

Mr. **Kramer.** You don't see that as a question of availability of resources?

Mr. **Rohrer.** I believe that the school districts by and large have used that as a strawman. Boulder Valley is a rich area, and we've got a fairly good system going. They are still complaining to high heaven about money. They're not talking about meeting the needs of the kids but talking about budget and talking about cutting money.

St. Vrain Valley is almost as rich as Boulder, same county, yet they're doing almost nothing. The difference between Cherry Creek and Littleton, I think this is basically an attitude difference between the districts.

Mr. **Kramer.** What you're suggesting is that the State department should be more active in guiding or jumping on or whatever verb you want to use with these local schools?

Mr. **Rohrer.** One of the most important problems that I see is that the State Department and the Bureau of Education for the Handicapped are not withdrawing funds from districts who are doing very little or nothing. I think that if they took a greater interest in their administrative role, that things would begin to shape up rapidly and there would be less call on the Federal Government for money.

Mr. **Kramer.** Thank you very much. I appreciate having all of you and appreciate your sharing your thoughts with the committee.

I think what I would like to do is try to consolidate our next two panels into one and have it just basically a teacher panel. So if the following people are here and you want to testify, Janet Rountree, Joan Fairchild, William Shuster, Carolyn Finnell, and Kathy Valdez.

Mr. Sharp, I haven't forgotten you. What I'd like to do when we finish with this panel is have you briefly come up, because you're in a little bit different role than teachers here. And I think just for purposes of continuity, it might be better just to handle it this way.

Let me find out who is here. Starting on the end with the lady in the green dress, could you identify yourself for the record, and I'll know who is here and who hasn't been able to come.

Dr. **Fairchild.** I'm glad to hear you can still make comments like that at this end of the day. I'm Dr. Joan Fairchild, coordinator, special education program at the University of Colorado in Colorado Springs.

Mr. **Stines.** My name is James Stines. I'm with the Atlantis Learning Center. I'm not on the agenda.

Mr. **Kramer.** You're here to introduce Carolyn Finnell and Kathy Valdez; is that correct?

Mr. **Stines.** That's right.

Ms. **Finnell.** I'm Carol Finnell. I'm a staff member at Atlantis Learning Center.

Ms. **Valdez.** I'm Kathy Valdez. I'm codirector of education at the Atlantis Learning Center.

Mr. **Kramer.** We're happy to have all the witnesses. To the extent that you have statements that can be summarized without losing too much of their value, we would certainly appreciate that in the interest of time. Yor full statement will, of course, be entered into the record and will be looked at when we have a little more opportunity. I'll get back to Washington, D.C., and scrutinize these things pretty carefully and see what they say.

STATEMENT OF JOAN FAIRCHILD, COORDINATOR, SPECIAL EDUCATION, UNIVERSITY OF COLORADO, COLORADO SPRINGS, COLO.

Mr. **Kramer.** Dr. Fairchild, if you would like to start. Since I picked on you first, we would be happy to have your testimony at this time.

Dr. **Fairchild.** Fine. I'll try to summarize. I'd like to say something. When Mr. Bernstein was presenting his testimony, and Mr. Simon questioned him—he said he didn't at this point have specifics. In my role as an educator of teachers, I have a number of graduate students who are teaching in districts and often hear about waiting lists that are in districts. I'm talking now about districts that are around Colorado Springs, so I'm sure this could be multiplied many times.

During the past few months, I know of one of our districts which quit doing assessments of children who are in need of special services as of November so they wouldn't have waiting lists. They do no assessments from November on. Therefore, they couldn't be accused of an illegal waiting list, but neither do they take into consideration any children which are not identified almost until the first of the next year. So those kids could wait at least one year before services would be offered.

Another school district, which has almost become notorious at this point, hires a half-time special education teacher and half-time title I teacher. Therefore, they don't have to limit the number of children which this teacher can handle. This is a secondary teacher. And this teacher handles from 65 to 69 students a week for special services.

Another is a district which is saying to teachers:

> We don't want to start any more programs for the severely disturbed children; therefore, you handle these kids with your learning disabled students or mentally retarded students. And we won't have to start more programs.

So that's just three local districts around Colorado Springs. I can't imagine what it would be if we were to look at districts throughout the entire State.

I think that the comment that was made just prior, having to do with care or attitude, is probably basic to the whole implementation of Public Law 94–142. There seems to be relatively little difficulty with the law. The difficulty lies in the interpretation of the law, and the interpretation is certainly tied to attitude or to caring.

In a recent article in Time Magazine, Professor Lawrence Cremin of Teachers College, Columbia University, talks about that which we know makes a difference in public school systems. And I quote what he says:

> A number of studies indicate that certain kinds of schools are unusually effective. Whether the students are rich kids, poor kids, blacks, Hispanics. I inserted handicapped. Whites, these schools look very much alike on some criteria. The principal leads his teachers. The teachers become committed to teaching the basic skills. Expectations are high. Time is spent on classroom tasks, and a happy order pervades the school. Rules are widely known and quickly enforced. Parents are brought into the act and are supportive. In such schools, black kids learn, handicapped kids learn, white kids learn, green kids learn. The evidence suggests that the key is caring.

I suspect that is the evidence which we could have to support whether Public Law 94–142 is implemented and effective.

I would like just not to go into what I have talked about in my testimony on the strong points of the law and the problems of the law but to share with you the needs which I feel lie ahead of us in the implementation of Public Law 94–142.

First, both new and veteran teachers need screening not only on their ability in the basic skills but also in their ability as caring people. Our children, especially our handicapped children, must have the experience of an education provided by caring people. Without this, they cannot be guaranteed an equal educational opportunity.

Second, the provision of this kind of caring and expertise can be handled in part by relevant ongoing inservice for educational administrators, school boards, and regular classroom teachers from preschool through graduate school.

To guarantee the success of such massive inservice, it will require more than requesting that administrators and faculties involve themselves out of the goodness of their hearts.

Meaningful inservice will be successful only if it includes other factors. These might be in part recognition, relief time, financial award, incentive grants, and/or college credit, et cetera. The inservice cannot be out of the hide of the administrator or teacher. Inservice should include instruction on ways of varying curriculum and environment to meet the needs of the student, methods for working as part of a team, instruction in working with parents, and seminars in IEP writing and use.

Third, the involvement of the parent is so integral to the success of the education proposed by Public Law 94–142 that it must not be left to chance. There is a need for parent inservice that goes far beyond that carried out by schools at present.

The school has chosen to conduct inservices which essentially do not place the parent as a professional member of the team. These have included "How to Deal with Your Severely Handicapped Child in the Home," and other information-giving or problem-solving approaches. While these are worthwhile, they are not the types of inservice that will lead to the implementation of Public Law 94–142.

The inservice needed is one which acquaints parents wtih their rights and responsibilities. It is an inservice which is run jointly for parents, teachers, administrators, and for board members. It is an inservice which emphasizes professional partnership, which teaches interpersonal communication.

It is vital that all members of the team share this inservice together. It is my firm conviction that if this type of inservice were successfully provided, parents could become the Federal monitors of the IEP. It is obvious that no program monitoring group from the outside can from a piece of paper judge the correctness of an IEP. Without the knowledge of the child, their decision would not be valid.

Fourth, the Federal Government, Congress or President, should take the initiative in the holding of a national conference on advocacy for the handicapped. It is difficult for educators, even those at the Federal level, to take such initiative because the concept of equal partnership with parents is such a departure from the norm.

Fifth, the continued development of the concept least restrictive environment will require that service be offered in the least disruptive way and not piecemeal. This means in part that 15 minutes to 45 minutes a day for a disconnected special education offered by a different person in a different place is often nontransferrable to the student.

Regular teachers, special teachers, speech or language pathologists, occupational therapists, physical therapists, parents, et cetera, must decide as a team on curriculum for the student, and the specialist must serve as the resources for the regular classroom teacher. There has been an effective program which can at least serve as a model, that of the itinerant teacher for the blind.

Sixth, least restrictive must always be defined on an individual basis. This is clear in the law but at times not clear in the interpretation. Least restrictive does not mean a child with binaural hearing aids can be educated in a sixth grade with 30 students which takes place in an open setting. Nor does it mean an isolated education in a school for deaf children.

To be effectively educated in a least restrictive environment, adjustments in the regular classroom will need to be made. The teacher will require inservice on how to meet the needs of the student with great differences, services from specialists who can act as part of the teaching team, less children in the classroom so that it becomes possible to accommodate large differences, and physical environment conducive to learning for the particular child or children.

Seventh, school districts should make use of professional consultants from the community who are able to work with both parents and districts to design individual programs for children who are difficult to serve.

Thank you for inviting me to share this with you.

Mr. **Kramer.** Thank you for your testimony. Let me ask you this if I might: With the exception of the point in your statement about the convening of a national conference at the Federal level, in terms of your other suggestions, which I think there are a lot of very sound ideas in there, which ones of those are addressable at the Federal level do you think?

Dr. **Fairchild.** I think that there are several. First of all, the Federal level can address the need for changes in the way least restrictive environment is interpreted. It can look at the need for, for instance, the reverse mainstreaming which the parent spoke of earlier. It can talk of the need for perhaps lowering the classroom numbers of regular children if the teacher is to serve a number of special children in the classroom.

Mr. **Kramer.** I don't want to put you on the spot, because obviously you're not a legislator. My election proves you don't need any particular talents to be that. But do you see these as primarily regulatory in nature, or do you see statutory changes being called for?

Dr. **Fairchild.** I assume they're regulatory. Now, I must admit my knowledge of legislation is fairly limited. But I would assume they're regulatory. I would also see that some effort at the Federal level might be expended. And perhaps some of the moneys that we're now putting into OCR might be saved if we provided the inservice moneys for parents to become intelligent monitors of their children's IEPs.

I think schools are afraid of this. We have a right to be. We've never been faced with including parents as equal partners in the education of their children. We're not going to do it without a little push from somebody. And I suspect the Federal Government's going to have to push us. It shouldn't, but it probably will. There is too much that's, say, 4 and 5 years after we're supposed to—3 or 4 years after we're supposed to put some of this into practice that we're not including parents in the IEP process, that we're not educating parents as to their rights and responsibilities, that we're not involving parents as members of the team.

We're putting staffings at 7 o'clock in the morning and saying softly, "You are welcome to be present." We do know that it works when you do work with the parents. It's happened. I think it's effective, but we're not doing it. I think perhaps we need somebody to give us a little impetus from the rear end.

Mr. **Kramer**. Let me ask you one other question, if I might, that's not really related to your testimony. I guess I pick on you primarily because we didn't have any representatives show up from some of the rural areas that we expected. We anticipated more testimony from maybe three or four people, superintendents, other people, some of that sort.

In their absence, could you give me any indication of how you feel that the rural school districts are going to be able to cope with doing all these things that obviously we've had some difficulty within very large and well-to-do school districts. Obviously, the problems of lack of resources and things like that would impact very adversely on the ability to comply with this law in a rural area. Do you have any special thoughts on that?

Dr. **Fairchild**. I'm sorry John wasn't here. I think he could have talked about what some of the people are doing. And I do believe that some of the boards of cooperative services are the answers to helping the rural districts to do these things. There is no question that the rural districts alone do not have the staff or the funds or probably the expertise to carry on programs. But together in cooperative boards, they can become able to do this.

Now, Colorado has a problem in this. We have never made it mandatory that districts participate in the boards of cooperative services. Our State department is limited in their ability to say to local districts, "You must do these things." Now, this is not true in all our States. Iowa, for instance, has a very strong State department which says to their boards which are over all of their school districts, whether they're urban or rural—Des Moines must belong to a board of cooperative services; the smallest district in Iowa must belong to one. In our State, you can elect to be part or not be part. You can take what you want to out of the board and not participate in the rest. Consequently, our boards of cooperative services are limited in their power, limited in their funds, limited in their ability to do.

But the answer to our rural districts has to be to cooperate in getting the services, especially for the handicapped which are low incidence and where they're going to take a great deal of funds in order to accomplish it. I think our rural districts are really up against a problem. Maybe they didn't come because they didn't have the money to come. I don't know.

We recently were funded for a BEH grant called the Dean's grant where we will be working with the junior colleges and the 4-year colleges in the southeast part of the State to design some curriculum for these young people that will be going into regular education. And one of the boards of cooperative services down in the far reaches of our State wrote a letter of support which really was a plaintive cry for help and said, "If you don't help us, I don't know who will." They need help.

The way to come by that help is going to be to work together to get it. The way we're structured in our State, we don't have enough clout to say, "The boards are important, and you must participate."

Mr. **Kramer**. Thank you very much.

[Prepared testimony of Joan M. Fairchild follows:]

PREPARED TESTIMONY BY JOAN M. FAIRCHILD, ED. D., COORDINATOR, SPECIAL EDUCATION PROGRAMS, SCHOOL OF EDUCATION, UNIVERSITY OF COLORADO, COLORADO SPRINGS, COLO.

First, let me state what an honor has been accorded me in being asked to testify before the Subcommittee on Select Education of the House of Representatives. The importance of Public Law 94-142 and Section 504 of the Rehabilitation Act of 1973 is without question. For those of us who are parents of, work with, and teach the handicapped, these laws are the most important pieces of education and civil rights legislation to be passed by Congress in the last few years. It is regrettable that in a democracy based on our constitution it took the enactment of laws to encourage us to remember that human rights belong as much to the handicapped as to any of the rest of us. The resistance and slowness of compliance of some of us in education and in the work force across the country leaves no room for doubt regarding the importance of having these laws. Without their impetus, change would not take place.

Public Law 94-142 is having a tremendous impact on education and services for the handicapped. In schools where caring teachers, parents and administrators are working together, advances are taking place with rapidity. In the June 16, 1980 issue of Time Magazine, there is an article severely critical of public education in the United States. In that article, Professor Lawrence Cremin of Columbia's Teachers College states: "'A number of studies indicate that certain kinds of schools are unusually effective. Whether the students are rich kids, poor kids, blacks, Hispanics, (handicapped) whites, these schools look very much alike on some criteria. The principal leads his teachers. The teachers become committed to teaching the basic skills. Expectations become high. Time is spent on classroom tasks, and a happy order pervades the school. Rules are widely known and quickly enforced. Parents are brought into the act and are supportive. In such schools, black kids learn, (handicapped kids learn), white kids learn, green kids learn'.... The evidence suggests that the key is caring."[1]

An exciting task would be to survey the country for case studies which would give credence to the effectiveness and importance of Public Law 94-142. Each of us could offer testimony to support the change which is taking place under the direction of caring people using the law—i.e., the severely multihandicapped child who is receiving an education tailored to fit his precise needs. This I.E.P. includes a provision for on-going in-service for the faculty and staff of that school, plus all of those whose professional expertise touches the child so that all can give the proper support to his education. "Least restrictive" for that child will not include a great deal of time in a "regular" classroom, but all contacts from principal, teachers, parents, staff and children during the child's day will be positive for his growth. The same public school also has included several classes of trainable mentally retarded children who, until the passage of Public Law 94-142, were housed in a separate facility. The warmth and caring of this new "least restrictive" environment has led to immediate and lasting gains in social, academic and language areas for each of the children. Another elementary school has involved the entire building in programming for a brittle diabetic child who at this moment is legally blind. Each step of his I.E.P. has been concerned with how the school can best meet his changing needs. Nothing has been spared in terms of special help and special equipment. For this child "least restrictive" has meant "regular" education, plus the help of an itinerant teacher of the blind.

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[1] "Education", Time Magazine, June 16, 1980, p. 63.

Sometimes change comes with greater difficulty to secondary education than it does to elementary. A comprehensive high school in our town, as a result of a caring principal and a number of caring teachers - including some who are vocational educators - has designed and is executing an innovative and exciting saleable skills training program for their handicapped students. Its lasting results won't be available for a while, but at the moment several unusual things are happening: vocational teachers and special education teachers are working together as a team; absenteeism is practically nonexistent among the population participating in this program; community employers are actively involved as part of the teaching faculty. So that I am not accused of concentrating entirely on changes in elementary and secondary education, let me also mention some changes occurring in higher education. Higher education, most of all, is resistant to change. A student from our area who has severe specific learning disabilities and whose public education included the constant involvement of special education, is now a student in a junior college. With the impetus provided by P.L. 94-142 and the close cooperation of his parents, traditional college courses are being varied to fit his individual needs. As a consequence, a bright young man who has consistently wished for a military career is going to achieve his objective.

There are a number of problems, not with the law, but with its interpretation, which need to be pinpointed and need constant surveillance by a regulatory agency until solutions are found. As with any piece of legislation which guarantees the right to a free and appropriate education, P.L. 94-142 is only as effective as those who are concerned with its implementation. There are still a large number of educators and community leaders in our country who are not convinced that handicapped persons have worth as human beings. This non-conviction as to their importance led to the need for laws to guarantee their rights and sabotaged the interpretation of these laws. A short time ago the Dean of Graduate Education at a large university whose primary goal is the education of teachers, stated in a public meeting that he would not want teachers of his children wasting their time trying to educate "those handicapped kids" when they should be spending their efforts on the future leaders of our country. Obviously, "handicapped" and "future leaders" are mutually exclusive terms. The influence of such a man is widespread and frightening. While caring cannot be legislated, the creation of a law such as P.L. 94-142 does bring change in attitude over time.

The use of the concept "least restrictive" within the law has been used by some school administrators as justification for failure to provide services. In other words, the "regular" classroom alone must meet the needs of the student. There are always those who use statements in a way that accomplishes their own ends. This interpretation can only be halted by continuous surveillance. The State Departments of Education will need to be constantly aware of the written and actual policies of local districts.

The inclusion of the rights of parents as active partners in the education of the child is one of the strengths of P.L. 94-142. The handicapped student needs every possible break to insure that he/she receives an equal educational opportunity. The parents must be involved if this is to happen. The schools are concerned and unsure about this involvement of parents. For the first time, teachers are required to share the curricular decision-making process with others. This is not only unfamiliar but quite frightening. Schools of education will need to change their teacher training programs not only for special educators, but also for regular educators to make certain that they graduate with skills needed for working with parents and other adults.

Interpretation of Public Law 94-142 has included for some districts a very broad view of "meeting the child's needs". This is being done to resist setting up more and varied ways of meeting special needs. For instance, a district that is unwilling to develop more services for severely emotionally disturbed students at the junior high level tells the teacher of learning disabled children that there is no reason why these overflow emotionally disturbed students cannot function within her classes. Another local district, unwilling to provide special services for a profoundly deaf child assured the parents that a classroom for the mentally retarded would adequately meet the needs of this child.

The I.E.P. is a new experience for teachers. This requirement of accountability is so foreign to their experience that the phrase "buried in paper work" has been used to justify their inability to handle this requirement. The special educators are not alone in their reaction to the I.E.P. The regular classroom teacher is so resistant to involvement that the I.E.P. is being interpreted as being relevant only to the special services portion of the curriculum. Regular teachers are not being involved and often do not wish to be. The lack of in-service for the educational administrators, the decision makers (governing bodies of the school system), and the teacher in the mainstream has led to fear and lack of acceptance. The June 16, 1980, issue of *Time Magazine* headlines the paragraph touching the needs of the handicapped: "Mainstreaming as Nightmare". That statement is often true of something new. However, the administrators, school boards and teachers need understanding and help.

Some districts are using "lack of funding" as the basis for denying services to children. In Colorado this approach can be appealed through the use, by parents, of the Legal Center for Handicapped Citizens in Denver.

Parents need to be appraised of their rights and of the fact that funding may not be used as a reason for denying services.

The above problems lead to the requirement of a listing of "needs" if Public Law 94-142 is to be as effective as Congress wished when they developed this legislation. As a citizen actively involved for the past twenty-five years in the education of handicapped children and youth, I would like to propose the following list of needs:

1. Both new and veteran teachers need screening not only on their ability in the basic skills, but also in their ability as caring people. Our children, especially our handicapped children, must have the experience of an education provided by caring people. Without this, they cannot be guaranteed an equal educational opportunity.
2. The provision of this kind of caring and expertise can be handled in part by relevant on-going in-service for educational administrators, school boards and regular classroom teachers from pre-school through graduate school. To guarantee the success of such massive in-service, it will require more than requesting that administration and faculties involve themselves out of the goodness of their hearts. Meaningful in-service will be successful only if it includes other factors. These might be, in part, recognition, release time, financial reward, incentive grants, and/or college credit, etc. The in-service cannot be out of the hide of the administrator or teacher. In-service should include instruction on ways of varying curriculum and environment to meet the needs of the student, methods for working as part of a team, instruction in working with parents and seminars in I.E.P. writing and use.
3. The involvement of the parent is so integral to the success of the

education proposed by P.L. 94-142 that it must not be left to chance. There is a need for parent in-service which goes far beyond that carried out by schools at present. The school has chosen to conduct in-services which essentially do not place the parent as a professional member of the team. These have included "How to Deal With your Severely Handicapped Child in the Home", and other information-giving or problem-solving approaches. While these are worthwhile, they are not the types of in-service which will lead to the implementation of P.L. 94-142. The in-service needed is one which acquaints parents with their rights and responsibilities. It is an in-service which is run jointly for parents, teachers, administrators and board members. It is an in-service which emphasizes professional partnership—which teaches interpersonal communication. It is vital that all members of the team share in this in-service together. It is my firm conviction that if this type of in-service were successfully provided, parents could become the federal monitors of the I.E.P. It is obvious that no program monitoring group from the outside can, from a piece of paper, judge the correctness of an I.E.P. Without the knowledge of the child, their decision would not be valid.

4. The federal government, Congress or President, should take the initiative in the holding of a National Conference on Advocacy for the Handicapped. It is difficult for educators, even those at the federal level, to take such initiative, because the concept of equal partnership with parents is such a departure from the norm.
5. The continued development of the concept "least restrictive" will require that service be offered in the least disruptive way and not piecemeal. This means in part that fifteen minutes to forty-five

minutes a day for disconnected special education offered by a different person in a different place is often non-transferable for the student. Regular teachers, special teachers, speech or language pathologists, occupational therapists, physical therapists, parents, etc., must decide as a team on curriculum for the student, and the specialists must serve as the resources for the regular classroom teacher. There has been an effective program which can at least serve as a model—the itinerant teacher for the blind.

6. "Least restrictive" must always be defined on an individual basis. This is clear in the law, but at times not clear in the interpretation. "Least restrictive" does not mean a child with binaural hearing aids can be educated in a sixth grade with 30 students taking place in an "open setting". Nor does it mean an isolated education in a school for deaf children. To be effectively educated in a "least restrictive" environment, adjustments in the regular classroom will need to be made. The teacher will require:
    - 6.1 in-service on how to meet the needs of this student with great differences,
    - 6.2 services from specialists who can act as part of the teaching team,
    - 6.3 less children in the classroom so that it becomes possible to accommodate large differences, and
    - 6.4 physical environment conducive to learning for the particular child or children.
7. School districts should make use of professional consultants from the community who are able to work with both parents and district to design individual programs for children who are difficult to serve.

Thank you again for the opportunity to share with you my views on the progress of Public Law 94-142.

Joan M. Fairchild

STATEMENT OF JAMES STINES, DIRECTOR, ATLANTIS LEARNING CENTER

Mr. KRAMER. Mr. Stines.

Mr. STINES. Thank you. My name is James Stines. I'm the director of the Atlantis Learning Center which is the subdepartment of Atlantis Community, Inc. Atlantis Community is a nonprofit corporation whose main focus is advocating for the rights of the disabled. We also advocate for the handicapped individual to live as independently as possible in the community. We provide them with a variety of support services. We have been doing this in the past year. We have come across a great obstacle that is too large to push aside, and that problem is one of education.

To be able to live independently, one must have the educational background to successfully achieve independence. This is where our interest lies, and this is one of the reasons for our participation in today's hearing.

At this time I would like to make a differentiation between two groups of disabled. First, there are those who were ablebodied at one time but are now disabled as a result of an accident or a disease onset later on in life such as muscular dystrophy, multiple sclerosis, or Parkinson's disease. Secondly, there is the population of disabled persons who were born with birth defects. This is the group we are mostly focusing on.

The average clientel that comes to Atlantis has at one time or another been in an institutionalized setting for a long period of time. And the education which they received is very minimal if any at all. The clients coming out of an institution may be in a nursing home or a State home. They are usually illiterate, unable to properly feed, dress, or even maintain their personal needs. They are unable to read, write, count, recognize shapes or colors, or even carry on a casual conversation.

An individual put into an institution is subject to gross neglect by both the family and the State. They are not offered any stimulation. And if they exhibit any special interests or talents, these talents are immediately stifled. That's not allowing them to experience their potential.

Today, I want to address two major areas that are of concern to the disabled. The first is that of being the mythical stereotype that the disabled, since they do not have perfectly physical formed bodies, must not be able to attain any type of knowledge. This is the thought, both in society and academia, that these people must be put away and out of the public's eye. But today the disabled are more and more becoming visual and thus becoming accepted within our society. They are educable, and they must have the opportunity for a good education.

And secondly, we'd like to focus on the fact that, (a) since the disabled do have learning disabilities as well as physical disabilities, it is imperative that they are able to attend the public school system past 21 years of age; and (b), that teachers receive some type of in-service type training to effectively deal with the disabled in their classrooms.

The special education school system is presently working on a selective-type process. This means that they are choosing which disability is too severe, who is to be placed in which institution or school. This is evident, I believe, of blind segregation within the school system. The disabled population is suffering more from not being educated than from their disability. Many have the potential to become professionals within our society and to be trained in skilled work.

Today, we're here to listen to the views on special education. We must consider the disabled adult as well as disabled child, the teacher as well as the student, the administration as well as the parents. We at Atlantis are emphasizing the need for the adult handicapped person to have the opportunity for the same intense education as any person in America or specifically the United States.

The following two presentations will be given by, first, Ms. Carolyn Finnell who is a staff member of the Atlantis Learning Center and also a client of the Atlantis Community. The second presentation will be presented by Ms. Kathy Valdez who is my codirector of the Atlantis Learning Center and also a client of Atlantis. Thank you.

STATEMENT OF CAROLYN FINNELL, TEACHER, ATLANTIS LEARNING CENTER

Ms. FINNELL. In June 1975, the Atlantis Community, Inc., was born as an alternative to the unfulfilling lives that young disabled adults were being forced to endure in nursing homes and public institutions. Early in 1974, a group of concerned disabled persons and able-bodied allies began educating themselves about the plight of young disabled individuals. They found that the majority of these young persons—some as young as 12—who were living in nursing homes had been neglected or abandoned by their families and were virtually trapped in a stagnating, paternalistic prison where their civil rights were ignored and violated, medical care was poor and impersonal, and individual creativity and initiative were not only not nurtured, they were overtly discouraged. The group that became Atlantis began looking for alternative living situations to the prejudiced, dehumanizing institutional lives that these young people were seemingly doomed to continue. The initial attempt at a solution was to set up a special youth program in a local nursing home, the object of which was to provide normalizing educational and social experiences for young people who had been denied such experiences. The program was to a large degree successful, but it soon became apparent that the humanistic goals of the Atlantis group were in direct conflict with the profitmaking motivations and paternalistic traditions of the nursing home industry. It was then, early in 1975, that the Atlantis early action project was conceived. The goals of the project were clear; to allow every disabled individual, regardless of the extent of his/her physical disability, the same rights and responsibilities as their able-bodied peers—the right to independent living, the freedom to choose a lifestyle and fulfill personal goals in education and employment, and freedom from a punitive traditional system that stigmatizes the disabled and segregates them from the mainstream of society.

The planning for the Atlantis Community started in January 1975. Public housing units were leased from the Denver Housing Authority in the Las Casitas Development at 11th Avenue and Federal Boulevard. Funds from the Colorado Division of Vocational Rehabilitation were secured to renovate the apartments and make them wheelchair accessible. Ramps were constructed, doors were widened, and shelves were installed within easy reach for a person in a wheelchair. In June, the first eight Atlantis residents were moved from their nursing home rooms into their own apartments and experienced a degree of independence and freedom they had never before been able to enjoy. Atlantis at the present time has two offices. One is located at 194 South Federal and is serving about 60 clients. The Eastside office is a recent addition and is located at 4536 East Colfax. It is currently serving 15 clients.

Traditionally, the young disabled person has been denied the right to an adequate education or meaningful employment and has been sent to a nonaccredited, segregated, special school or to a sheltered workshop to count fishhooks or untangle old phone cords for 5 cents an hour. Those who reside in nursing homes are often not provided any program at all. At Atlantis, we try to assist the individual in fulfilling whatever goals he/she outlines. At the present time, some of our clients are pursuing individual goals by attending Emily Griffith Opportunity School, Boettcher School, and colleges in the Denver area. Other clients with special needs are receiving courses in remedial skills, speech therapy and Braille through the Atlantis tutorial program which provides specialized tutors, in an employment program which works in conjunction with vocational rehabilitation. Atlantis has begun the difficult task of breaking down social prejudices against the disabled and is finding jobs in the community at large for disabled individuals. Atlantis itself provides meaningful employment for many disabled individuals, such as working on Atlantis' hot line. Other clients perform housekeeping duties for seriously disabled clients, coordinate recreation and transportation, and perform clerical and secretarial duties.

Our experience has taught us that merely providing apartments and attendant care services does not equip the young disabled person coming out of an institution to live an independent, self-directed life. For this reason, special programs have been initiated to aid clients in acquiring the skills necessary to take full responsibility for their own lives. Home training classes, where the clients meet in seminar sessions, are held to exchange ideas on how to organize and maintain an apartment. A consumer advocate has been hired whose duties include recreational planning but emphasize teaching clients how to perform their own consumer activities such as budgeting money, buying food and clothing, getting a phone installed, opening checking accounts, and paying for entertainment.

Disabled people are not sick people. They do not require a 24-hour-a-day medical staff of nurses and aides to supervise their personal needs and social activities. What is needed is a consistent source of responsible assistance when they want it. Atlantis hires a pool of attendants to fulfill this need. A transitional living period is provided for clients just out of nursing homes and this is done in the form of an apartment complex run by Atlantis. Decatur has attendants that are on duty 24 hours a day. Each apartment has a telephone and assistance can be summoned at any time, day or night, by these clients. Routine checks are made only on those clients who have immediate medical needs, request them, or need periodic weight shifts. Meals are prepared for clients who cannot do their meals themselves. Housework is also done. The client's apartment is his/her private residence and he/she decides who enters and what activities are entertained. The client schedules baths, meals, et cetera. There are no rules governing any individual's mobility or social life. We uphold the right of the disabled to take responsible control over their own lives.

Disabled individuals do have special medical needs. Nurses, attendants, and physicians who work with them should have this specialized knowledge. Our attendant staff is well trained in areas of special health concern such as skin, bladder, and bowel care, and routine medical needs. Emphasis is placed on teaching clients how to locate their own needs and instruct the staff to meet those needs. Atlantis makes full use of existing medical facilities. We are oriented toward rehabilitative activities and any client who shows the slightest rehabilitative potential is given full opportunity to explore it. Many clients who were diagnosed at an early age as unable to be rehabilitated have shown tremendous progress when allowed access to therapists and equipment.

It is our belief that any disabled person should have the right to choose where and how he/she wants to live. We believe that the same moneys that are provided to house someone in an institution should be made available to those who wish to live independently. We are working to this end. At the present time, an institution in Colorado receives well over $600 a month in tax money to provide custodial care for a patient. We can find no valid justification for this huge discrepancy which results in the taxpayer supporting the highly lucrative nursing home industry and discourages the elderly from pursuing independent and meaningful lives.

Our philosophy envelops the ideas of individual liberty and opportunity, and we are aware of the process that must take place. One cannot suddenly liberate all young disabled people from institutions without providing a viable process by which they can be integrated into society as productive, self-fulfilled independent citizens. It is our hope at Atlantis that by bringing disabled individuals together, they can, through their shared energies and experiences, teach and support each other in achieving freedom and growth.

Atlantis is a certifiable home health care agency and as such we are able to bill medicaid $150 to $490 a month for all the services we provide.

Atlantis remains a very socially active organization concerned with many issues that affect the disabled. Due in a large part to the efforts and demonstrations of Atlantis, in March, Denver will be the first accessible city in regard to transportation. We are also suing the nursing home industry and the Federal Government for rights of a disabled individual that were violated.

Mr. KRAMER. Thank you. Obviously, you have done quite well with yourself under difficult circumstances, and you had to fight for it.

But you were able to get through college, and I think that's great and certainly productive. So it certainly shows that, if given the opportunity, a lot of people can be educated that a lot of citizens feel, because they're not familiar with the situation, could not be.

Let me ask one or two questions if I might. As you know, Public Law 94–142 is limited in scope in terms of the people, by age, that it serves. To some extent, you're advocating that education must be made more expansive and available for the handicapped community than would be the mandate of Public Law 94–142. I guess my questions are: Do you want to see that concept expanded beyond the age limitations that are presently in the law, and how do you envision if that were done that that would be accomplished? Would you put adults into a primary or secondary school setting? Would you put them in another kind of mandated situation, be it a private school or a postsecondary kind of obligation? Would those be the schools to meet these needs, or are you really saying Public Law 94–142 should be expanded to include basically people of all ages?

Mr. Stines. Yes; I feel it should cover basically people of all ages. One reason is the fact that when a disabled child in the school system, reaches the age around 17, 18, he is put into a work-study program where he is trained in some field. After leaving the school when he reaches age 21, all the academics and the learning he has attained begin to decrease, and he needs that constant reiteration, maybe repetition if you will, of what he has learned. Because since he does have learning disabilities, he has a hard time in retention of the academics he learned when he was younger.

This is the reason it's necessary to continue the education. These people, once they reach the age of 18 or so, are geared towards the work-related world, I guess. And if given the opportunity to continue their education, we are saying that we can have skilled workers and professionals who are handicapped or severely disabled. Whether or not we will have adults within the school system, personally I think that would be great. In the public school system, if you were at a ninth grade level—if you had 15-year-old kids at the ninth grade level and you have a 30-year-old man who is at the ninth grade level, they should all be in together. It's a public school system.

The handicapped within the regular school system, meaning mainstreaming the handicapped into a regular school, is not only benefiting the disabled person but also the community as well.

Mr. Kramer. In your view of things you see this as being an obligation or something you would like to see the whole school districts be responsible for?

Mr. Stines. I'm looking to see the United States being responsible for the education of the disabled adults who have been neglected over the past 30 years. And now that people are becoming more aware and parents are beginning to take more of a deep-down rooted feeling toward their children who are disabled, 30 years from now we won't have illiterate adults that we have now.

I don't think it should be left up to a State or to the local public school system. I think it should be left up to the Department of Education.

STATEMENT OF KATHY VALDEZ, CODIRECTOR, ATLANTIS LEARNING CENTER

Mr. KRAMER. Ms. Valdez.

Ms. VALDEZ. I'm happy to be here——

Mr. KRAMER. Well, we're happy to have you.

Ms. VALDEZ [continuing]. And to have the opportunity to address this subcommittee on behalf of the disabled in America who, when they were children, were deprived of an education because society then thought if their bodies did not work normally, they could not learn like able-bodied children.

As a result of this thinking, they were pushed aside. Even some parents could not deal with having a disabled child, so they put them into State homes or institutions where they totally lost their individuality and received no basic learning like we did.

There are some children who do not know and did not know what it was to play because they were not taught. Or they did not know what a store was—that it was a place to shop. When I was a child, the educational system was very bad for the disabled. And as a child, I had a hard time getting a good education, because I had muscular dystrophy. And they thought I was going to die soon. So they thought it would be a waste to teach me, because it wouldn't do me any good.

Well, nothing to my way of seeing things, has changed in these modern times. I know some disabled adults who did not get any bit of basic education because of being disabled. They were thought to be unteachable. And I now work with these people who are well over 21 years of age, and they are learning. They are eager to learn, too. And it is harder for them, because they are older, and they didn't have that basic foundation.

There is one client who was attending Metro School in Denver. Because she turned 21, she could not finish her high school education or any education. They sent her to Emily Griffith Opportunity School, which to me wasn't doing her any good, because I was there at the time also. And they tended to ignore her because of her disability. They thought she couldn't learn when she could.

If the disabled child is not given the opportunity to learn, we will have adults who are more than just physically disabled. Their minds will be wasted. It is about time American people are made aware of the fact that there are disabled people around who have the same needs as they do.

Also, you need to educate the teachers to be more sensitive to a disabled child and that the disabled child can learn and needs to learn. Also, teachers have to be made aware of the fact that disabled children are around and will always be. There are some teachers who, in my experience, do not want to teach the disabled child. Some to my experience are also prejudiced and some are afraid and don't know how to deal with these children. But what they have to realize is that a child is a child no matter what or who. Children are children all with the same needs, and that goes for the adults, too.

Teachers in grammar and high school need a supportive system to help deal with each child. Teachers also need to realize that disabled people are not to be feared. They should treat us like normal people and mainstream the child and the adult with the same consideration as able-bodied children.

Mr. KRAMER. Thank you very much. I see by the remarks in your statement that you also believe that there is an appropriate role for the public school system in educating the handicapped adults and that you advocate that really as part of the regular school curriculum as opposed to, say, adult schools or continuing education or something of that sort.

Ms. VALDEZ. So they can get the basic class atmosphere.

Mr. KRAMER. Do you know of any States, either on a model program basis or any isolated projects either in Colorado or anywhere in the country, that have specialized in placing handicapped adults into a public school system setting?

Ms. VALDEZ. I have heard of none.

Mr. STINES. I have not heard of any.

Mr. KRAMER. That would be an interesting project to see how that might work.

Dr. Fairchild?

Dr. FAIRCHILD. That probably needs to be said, that the community colleges at least in Colorado have been very, very involved in the education of handicapped including the College for Living. And while they haven't been totally successful, they have provided for some of the need for adult education. I am sure it's correct that some people couldn't profit because they have received so little education that they couldn't even profit from the remedial work of the community colleges. But they have been doing a great deal.

Ms. FINNELL. There needs to be something. We trained in the old special school system where they have received nothing and community college——

Mr. KRAMER. Well, we certainly appreciate your remarks. This is an aspect I did not, in any of the hearings I attended—I didn't make all of the site hearings in some of the other localities—but this is something I've not heard really advocated this way before. So it's something we will certainly take into consideration and appreciate your sharing that view with us.

I need to apologize to you for not being able to visit your center, because we are running so far behind. I have made other commitments this afternoon in Colorado Springs. I personally am not going to be able to make the site visit, but the staff will and will report back to me. There were two site visits scheduled, and you were the second of the two in the order in which I was supposed to go. So please accept my apology for not being able to do that. But certainly the staff will report back to me on what they see. We congratulate you in your efforts and appreciate your being with us this afternoon. Thank you very much.

STATEMENT OF LARRY SHARP, COLORADO SPRINGS EDUCATION CENTER

Mr. KRAMER. We have one final witness that is going to give us a little different perspective, I think. That is on the impact primarily of section 504 on a private institution. Dr. Larry Sharp from the Colorado Springs Education Center. Is he still here?

Dr. SHARP. Yes. Thank you very much Representative Kramer. I'll try and be brief, because I know the day is becoming somewhat long and we all have commitments.

I should like to thank you for the invitation to address the committee on this most important subject. In the brief time available, I should like to address just three or four major themes which constantly confront me as a service provider in the private sector. Let me preface those themes by pointing out that the impact of Public Law 94–142 and section 504 appear to be significantly different between the public and nonpublic sectors. Therefore, my perspective and views are shaped principally by the reasons for which parents and guardians and agencies approach our center for special education services.

Parents are either private, independent, nonpublic school people who by choice do not look to the public sector for any form of educational services, or they are dissatisfied with the educational services planned and/or delivered by the public sector. I should, therefore, like to underscore the fact that I deal principally with dissatisfied parents, and that, obviously, has a tendency to shape one's view on what the public sector is providing in terms of special education services.

Let me turn to my main themes. It is my understanding that the preeminent intent of Public Law 94–142 and section 504 was to end the segregation of handicapped citizens in society. In my judgment, this is happening and has happened. But I am not convinced this is the appropriate terminal objective for this kind of legislation.

Additionally, it was hoped that Public Law 94–142 would at least have the effect of raising the awareness and increasing the public sensitivity to the educational needs of handicapped citizens. Again, this has occurred, but I fear expectations generated by legislation exceed the system's capability to deliver services.

Further, there is a root problem associated with the services intended by Public Law 94–142, and that problem has various facets represented by such questions as: Is the public school a clinical setting? In my judgment, a clinical, rehabilitative, therapeutic environment is required to provide the scope of services intended by Public Law 94–142 and those services objectively needed by the handicapped citizen.

Another way of asking the same question is: Is the public school system a treatment resource; that is, a treatment resource to include medical regimens such as pediatric or psychiatric services, and a psychological treatment resource to include psychotheraputic services, and general mental health services? If this is to be the case, that is if the public school is to be seen as clinical treatment resource, then I suspect we are probably duplicating already existing community resources. In its simplest form, the school system would then be functioning as a community mental health center for those clients served under Public Law 94–142.

My second major theme—and there are volumes existing on this subject, and the testimony of previous witnesses today has addressed this subject—is the concept of mainstreaming. It is generally accepted, I believe, that the word "mainstreaming" does not appear in the record form of Public Law 94-142. It is also generally accepted that the concept of mainstreaming referred to the legislators' wishes that Public Law 94-142 would facilitate the return of the handicapped to the "mainstream" of the American way of life. In my judgment, we ignore these generally accepted premises and use mainstreaming as a treatment in itself. It is tacitly assumed that if the child can be mainstreamed, the most important features of Public Law 94-142 are fulfilled, and the parent, therefore, ought to be happy.

In my judgment again, it is absolutely essential that this notion of mainstreaming as a treatment be intercepted and torpedoed. The mainstream classroom experience is not a treatment regimen; it is not designed to be a treatment regimen and cannot be so prescribed. The emphasis, of course, must be on the most appropriate education in the least restrictive environment. And as has been noted by a number of witnesses in previous testimony, for some proportions of handicapped children, the mainstream classroom provides them the least appropriate education and the most restrictive environment.

My third major theme is assessment. In my judgment, the framers of Public Law 94-142 assumed that the educational, psychological, and medical community had more precise, extensive data on educationally handicapping conditions than actually existed or exists today.

Educational programing which flows from Public Law 94-142 in the form of the IEP, either implicitly or explicitly, assumes we know how the central nervous system functions, especially as it relates to the process of learning. And so, for example, I would bring up two children, both identified as exhibiting visual perceptual disorders. In one case, the only evidence is static reversal of individual letters. In the other case, an abnormal EEG permits speculation about the existence of a lesion in the occipital area. The problem is, there is no differential diagnosis. In both of these cases, I say so what? Both children end up in the same class with the same teacher using the same techniques to remediate, very likely, two totally independent dysfunctions.

My point is, there is neither good data nor good agreement among professionals regarding the proper diagnostic procedures, especially as they relate to learning disabilities, nor to the meaning or application of findings in the field.

Research on the assessment of learning disabilities and educationally handicapping conditions is inadequate. I think this lack of assessment and diagnostic clarity directly contributes to the plethora of problems and concerns surrounding the term "appropriate education." In fact, I would assign one of the root causes to the variety of concerns over the term "appropriate education" to this lack of diagnostic clarity.

What's approprate? Is the same speech therapy regimen for an autistic child appropriate for an auditorily impaired nonverbal child? Who determines appropriateness—the chairperson of the staffing committee, the special ed director, the parent, the consulting pediatrician, the staffing committee?

If program A is determined to be appropriate but found later to be inadequate, why should parents have confidence when it is asserted that program B will be appropriate? How many different appropriate programs must parents agree to before their wishes are considered?

I think—and this is in addition to my prepared text, Representative Kramer. I think a major lack in the area of appropriateness is the lack of requirement for rigorous program evaluation and outcome evaluation. There is a great deal of emphasis on the content of the IEP, and generally that tends to appear in most IEPs. But I see a significant lack of determination to effectively measure the extent to which that IEP has achieved the objectives which are specified in it.

So I assign, again, a major causal factor in the problems associated with appropriateness of the program to a lack of ability to know what changes the program has made. It's inadequate simply to put down on the paper that the teacher has observed the following changes in the child over the year. It is unscientific, it is unreliable, and it cannot be dealt with in a way that will permit us to adequately talk about the changes as a result of the program.

In general, my experience leads me to conclude that an additional concern which surrounds the problem of appropriateness is neglect of parental wishes. I wholeheartedly endorse Dr. Fairchild's assignment of an equal professional status to the parent in the staffing procedure. My experience, again, to a particular set of school districts in a particular geographical area tells me that in general parental concerns and desires are somehow accorded little if any validity in the staffing procedure. Parents must be considered professional partners. And at some point, their wishes must have equal weight with the professional community.

Those four general themes represent those areas which surface most often in my interaction with parents and members of the professional community regarding the inadequacies of Public Law 94–142. Thank you.

Mr. KRAMER. Dr. Sharp, I just have several questions for you. I'd appreciate your sharing your views with us. Can you tell us the kinds of students you serve in your school. To what extent do you provide the same services as the public schools do? And to what extent do you provide services apart from what the public schools are providing?

Dr. SHARP. All right. There are three questions there.

Mr. KRAMER. As I understand it, in the operation of your school, you would not be governed by Public Law 94–142, but you would be governed by section 504.

Dr. SHARP. That is correct. The private school is incorporated into the State of Colorado laws for private nonprofit corporations. The student body is, agewise, kindergarten through 12th grade. Our public statements indicate that we can provide services, for learning disabled, mildly brain damaged, mildly emotionally disturbed students in that age range. And that is the age range we tend to serve.

We have a student population for a variety of reasons, two of which I mentioned. The parents simply, even though they have a child who requires special ed services, place their child in a private setting. Or the student population is made up of children whose parents are not satisfied with what's happening in the public sector, correctly or incorrectly.

I would say that the services we provide are more often than not quite similar to the services which the public sector can provide or should be able to provide but, for a variety of reasons, perhaps are not providing, or it is the parental judgment that those services are not being provided.

The teachers who are on staff at our school are quite similarly trained as the special ed teachers in the public sector. They're Colorado State certified, and have experience with the student population which we serve. We have no magic curricula, and we have no magic potions which we sort of dust on the students.

I think, as it was mentioned before, it is a function of a certain amount of caring—and that's an attitudinal factor—and a relatively well-controlled environment. The school is extremely small. The student-teacher ratio is not more than 8 to 1 and usually closer to 4 to 1 and you add professional and paraprofessional aides.

My criteria for teacher selection perhaps is not different from what a public school personnel director's criteria would be. But I think it results in a particular type of classroom person who has unusually intense sensitivity to the needs of the children. And I think that can be reflected in their interactions in the classroom. So that describes I think a general situation where the services are not markedly different but the outcomes tend to be different.

Mr. KRAMER. What do you charge for tuition?

Dr. SHARP. The 1981 tuition will be $350 per month for a 10-month school year. So that will be $3,500. That is day facility only, not residential.

Mr. KRAMER. How many students do you have?

Dr. SHARP. The population varies, but about 50.

Mr. KRAMER. One final question. Would you advocate the establishment of some kind of a diagnostic center perhaps on a statewide basis or multischool district basis to make evaluations in conjunction with the parents as to what an appropriate environment and appropriate education and least restrictive environment would be for the particular child, or do you think this should be as it is now, basically handled by the local schools?

Dr. SHARP. Well, to the extent that a central diagnostic unit would improve the reliability and, hopefully, therefore the validity of evaluations, yes, I would agree with that. I think it's not so much a function of that, however, Representative Kramer. I think it's a function of just a lack of a consistent research base, especially in the area of learning disabilities.

The scientific community in my judgment is simply not smart enough yet to know what we're talking about when we talk about learning disabilities. The term is widely used, and there are classrooms for children with perceptual and communicative disorders. And there are curricula designed by educational firms to remediate those. People make attempts to judge the extent to which those curricula and those programs improve one's perceptual or communicative disorders. But there's just not good agreement, and there just aren't good data.

I think the teacher training programs and the school psychologist training programs lack a good deal of depth in terms of the concept of learning disabilities, the instruments available to assess the deficits, and the recommendations in terms of what kind of regimen these children be entered into to remediate their learning disability.

Mr. Kramer. How does your staff compare with that of the public schools?

Dr. Sharp. I try to stay within 90 percent of the largest local school district. I don't always do that, but that's my goal.

Mr. Kramer. Thank you very much. I appreciate your testimony. I give thanks to you and the rest of the people that testified here today and a special thanks to our court reporter who is a very good sport having gone 4 hours-plus nonstop. That's perhaps a new record for Colorado. We appreciate your contribution here today. We should submit it to Ripley's "Believe It Or Not" or some other publication.

Without any other witnesses scheduled, the committee will stand in adjournment subject to the call of the chairman. Thank you very much.

[Whereupon, at 1:40 p.m., the hearing was closed.]

FIELD HEARINGS ON THE EDUCATION FOR ALL HANDICAPPED CHILDREN ACT

MONDAY, SEPTEMBER 22, 1980

House of Representatives,
Subcommittee on Select Education,
Committee on Education and Labor,
Kansas City, Mo.

The subcommittee met, pursuant to call, at 10 a.m., in the U.S. Federal Building, Hon. Paul Simon of Illinois (chairman) presiding.

Members present: Representatives Simon, Coleman, and Erdahl.

Staff present: Cheryl Kinsey, research assistant; Jane Baird, legislative assistant; Dianna Cregger, executive secretary; and John Dean, minority legislative assistant.

Mr. Simon. The Subcommittee on Select Education will come to order.

We are pleased to be here to hold hearings on Public Law 94-142.

We are here specifically at the request of Congressman Tom Coleman, who is a member of the subcommittee and has been a very constructive and hard-working member of that subcommittee. We are grateful for his service to the subcommittee in the many areas over which we have jurisdiction.

In addition to Congressman Coleman, we are pleased to have with us Arlen Erdahl, a Member of the House from Minnesota.

John Dean, a member of the staff, is also present.

Before we proceed, do either of you wish to say anything before we move into our witnesses?

Mr. Coleman. Paul, first of all, let me welcome our committee to Kansas City, and welcome our guests who are here today. It is very important that we find out how the education of handicapped students is being administered in Missouri.

I would like to point out that Chairman Simon, who is conducting our hearing, is widely respected for his work in a number of legislative areas. He is a leader of the House Budget Committee, and as chairman of our Subcommittee on Select Education, he has been very vigorous in the implementation of and assuming the oversight responsibilities of the Education For All Handicapped Children Act.

It is indeed a pleasure to have all of you attending here today.

Paul Simon is truly, in the best sense of the word, a gentleman. I am so glad to be able to serve with him on this subcommittee.

My friend, Arlen Erdahl, from Minnesota, to get here, took a plane last night that only stopped five times between his place in Minnesota and Kansas City.

Just to have you go through that, Arlen, I appreciate it very much.

Arlen is a first-term Member of Congress from Minnesota. He also serves on the Committee on Small Business. It has been a delight to serve with Arlen and to have him as a friend in the Congress.

The subject of today's hearing is the Education For All Handicapped Children Act, known sometimes as Public Law 94-142, and its application to learning disabilities.

This act, which was first enacted in 1975, is the most complete legislative action ever taken by the Federal Government to meet the educational needs of handicapped children. The goals of Public Law 94-142 are objectives which demonstrate a firm commitment on the part of our society to opening the doors to opportunity to all Americans, including those with learning disabilities. Under Public Law 94-142 the following assurances are made:

1. That all handicapped children have a free and appropriate public education which emphasizes special education and related services designed to meet their unique needs.
2. That the rights of handicapped children and their parents and guardians are protected.
3. That States and localities provide for the education of all handicapped children.

The purpose of today's hearing is education for learning-disabled youths. There is perhaps no other area of education policy in which so much misunderstanding and confusion exists. Today even among the academic community there is widespread disagreement on the definition of learning disabilities.

For purposes of our hearing today, we should look at how the term is defined in the act itself. The term "learning disabilities" as contained in the act is defined as follows: Children with specific learning disabilities means those children who have a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in imperfect ability to listen, speak, read, write, spell or do mathematical calculations. Such disorders include such conditions as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia and developmental ephesia. Such term does not include children who have learning problems which are primarily the result of visual, hearing or motor handicaps, of mental retardation, of emotional disturbance or an environmental, cultural or economic disadvantage.

What is important to remember, as we proceed with today's hearing, is that learning disabilities have been defined for the most part by the process of elimination. Children with learning disabilities are often extremely talented and creative children. They simply do not learn some specific basic developmental and academic tasks, as most children do.

What is also important to remember is that the causes for many forms of learning disabilities are still unknown.

Although the challenge Public Law 94-142 poses to State and local school authorities has generally been enthusiastically accepted, some problems remain in the implementation of this act.

Today, we will hear from school administrators, teachers, and parents on how the law is working in north Missouri. I am hopeful that the subcommittee will be able to use the information we receive today to improve the act so that handicapped youths will not be limited in their aspirations as a result of shortcomings in the public education available to them.

Thank you very much, Paul.

Mr. SIMON. Thank you, Tom.

Mr. Erdahl.

Mr. ERDAHL. Thank you, Mr. Chairman, and thank you, Tom, for the invitation to be here today in Kansas City. It is nice to see this good turnout.

The reason we are a bit delayed is that we were at a neighborhood diagnostic center, with which some of you are well acquainted. As we went through there, it struck me as we viewed some people with learning problems that we shouldn't forget about their possibilities—these youngsters that have a lifetime ahead of them. I think those of us in government, you in education, parents, other concerned people, should not overlook these problems, but deal with them and realize that there are great possibilities for these children so we should try to help these children gain their full potential. Early diagnosis is so important as is proper treatment.

I am very happy to be here and to be with my friend and colleague, Tom Coleman. He has demonstrated in the 20 months that I have been in Congress a real concern not only in education, but in other areas as he seeks to represent those who elected him and sent him to Congress. Of course, it is a pleasure to be here with Paul Simon, our chairman, who has demonstrated national leadership in this specific area.

As I looked down at the title of this hearing, I saw one thing that we should remember as we go through this. All of us are here today to listen and to learn, primarily to learn from your experience and to hear your suggestions. As you deal with education for all handicapped children, we should try our best to see that we touch and deal with all handicapped children.

Thank you very much, Mr. Chairman. I am pleased to be here today.

Mr. SIMON. Thank you very much.

We will ask our first panel to take seats in front of us.

PANEL: ROLAND J. WERNER, JR., STATE DIRECTOR OF SPECIAL EDUCATION; RAYMOND WAIER, SUPERINTENDENT, NORTH KANSAS CITY SCHOOL DISTRICT; IMOGENE MILLER, DIRECTOR OF SPECIAL EDUCATION, PARK HILL SCHOOL DISTRICT; AND CHARLES CUMMINGS, DIRECTOR OF SPECIAL SERVICES, ST. JOSEPH SCHOOL DISTRICT

Mr. SIMON. Dr. Roland Werner is the State director of special education; Dr. Raymond Waier is the superintendent of North Kansas City School District, which we have just had the opportunity of visiting; Imogene Miller, the director of special education of the Park Hill School District, and Charles Cummings, the director of special services for the St. Joseph School District.

We welcome all of you.

For the purpose of brevity, we would like you to summarize your statement and then we can enter the full statement into the record. However, if you wish to read the statement, you may do so. We will proceed by hearing from all witnesses on the panel and then we will toss questions at you.

I will first call on Dr. Roland Werner, director of special education for the State of Missouri.

STATEMENT OF ROLAND J. WERNER, JR., STATE DIRECTOR OF SPECIAL EDUCATION

Dr. **Werner**. Thank you for giving me the opportunity to present information to the oversight committee.

I would like to read my statement.

My name is Roland Werner. For the past 5 years, I have served as the director of special education for the Missouri Department of Elementary and Secondary Education. The State board of education is responsible for assuring that each local school district within the State complies with the provisions of Public Law 94–142. Missouri has 554 school districts with an enrollment of approximately 873,000 students. Our public schools provided special education and related services to over 95,000 handicapped and severely handicapped children and youth during the last school year, 1979–80. The State of Missouri expended $54 million in special education funds, which we call exceptional pupil aid, during the last school year to assist those districts in providing special services. In addition, the State received approximately $20.5 million from Public Law 94–142, from your appropriation. The department estimates that for the current year, 1980–81, we will allocate approximately $64 million to the local school districts of the State for special ed services, with an additional $21.5 million to be made available under the provisions of Public Law 94–142.

The U.S. Congress, in approving Public Law 94–142, did agree to provide funds necessary to assist States in assuring the provision of services which Mr. Coleman spoke of. For the current fiscal year, the act authorizes funds equal to, and I will quote "the number of handicapped children ages 3 to 21 receiving special education and related services multiplied by 30 per centum of the average per pupil expenditure in public elementary and secondary schools in the United States."

For the State of Missouri that authorization level represents approximately $56.4 million if the average per pupil expenditure is $2,000.

The issues which are to be discussed, in most instances, can be solved by State and local school districts if the necessary funds become available to serve our children.

You asked me specifically to respond to the issue which is currently evolving through the courts and through administrative reviews across the Nation and that is the extended school term for certain handicapped students.

The court action in the *Armstrong* v. *Kline* decision requiring local school districts in Pennsylvania to extend the school term for handicapped and severely handicapped children has initiated a series of due process hearings across our State on this very issue. Currently under Missouri statutes we are required or we require local school districts to provide all students at least 174 days of instruction within a term of at least 180 days. The *Armstrong* v. *Kline* decision will have a number of effects if implemented within our State.

There are a number of questions involved in that decision also and I would like to address those issues.

First, we must validate the claim that by extending the school term educational regression will be lessened or will not occur. Perhaps a better answer than the extension of a school term for more than the 180-day requirement under school law is a rescheduling of the school term which would provide for briefer respites of time than the 90-day period we currently experience during the summer months. That is one of the major issues.

Second, successful management techniques need to be developed which will lessen educational regression of handicapped and severely handicapped children and youth. Such techniques might include activities that parents, family, and community service agencies could provide during noneducational periods. Cooperative efforts between schools and other public agencies to implement such a "total treatment plan" is well within the spirit of 142. That is the issue that others testifying will speak of and that is interagency cooperation.

Third, the continuing and intense educational activities required in the education of handicapped and severely handicapped children and youth take their toll on professional and support personnel in the classroom. The extension of services could seriously affect the emotional and physical well-being of many practicing educators. We must keep this item in mind during any discussion and decisionmaking activities concerning extended school term services.

The availability of funds that are required to carry out such services should be provided jointly by the U.S. Congress and State legislatures. The U.S. Congress initiated the act to assure that all handicapped and severely handicapped children have available a free appropriate public education. States, through their boards of education, have accepted that responsibility. Jointly they can provide the necessary funding to meet these needs.

Defining educational related services. Many of the handicapped students who receive special education services from the public schools of our State are also in need of related services if their programs are to be appropriate. The act defines related services as, and I will quote again from the law:

> Transportation and such developmental, corrective and other support services (including speech pathology and audiology, psychological services, physical and occupational therapy, recreational, medical and counseling services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a handicapped child to benefit from special education and includes the early identification and assessment of handicapping conditions in children.

In general, local school districts have not been hesitant to provide related services to the handicapped and severely handicapped students enrolled in their special education program. There are occasions when local school districts receive a handicapped student in its program in need of related services which do not specifically meet the categories defined by the act. Such students may require services such as catheterization, blood transfusion and infusion, aspiration of tracheotomies and psychotherapy if they are to participate in the educational programs at the public school. There has been no resolution to the question of whether these and similar services are educational or medical in nature or whether they were intended to be included in the definition of related services.

I am aware of the initial efforts of the U.S. Department of Education to study the issue. A possible solution to the question is the development of clear definitions of related services authorized under the act which should be provided by school districts and the development of working agreements between education and other service agencies to provide these necessary services which are noneducational, but are required if the student is to remain in the least restrictive environment. School districts should not be required to act as medical clinics, assume the liability that such services demand, nor diffuse the already limited educational dollar in the process.

Teacher availability and burnout. In recent months a new term has begun to become common in our educational community and that is "teacher burnout." The term can be defined as a general pervasive feeling of excessive workload, nonappreciation, lack of progress in meeting stated or personalized goals, and lack of sufficient salary and benefits for the efforts and products achieved. Easily susceptible to burnout are special education classroom teachers, their teacher aides, and those other personnel who provide special education and related services to handicapped and severely handicapped children and youth. Yet these same personnel are the foundation of this State's special education program.

A continuous effort needs to be made to provide necessary classroom resources to these personnel. Appropriate instructional materials, equipment and facilities are priority items in the provision of a free appropriate public education to our handicapped students. Appropriate levels of sufficiently trained and qualified personnel are needed. Yet these basic items, the very ingredients that will mix together to form a free appropriate public education, are not available unless sufficient funds find their way to the school districts. Sufficient funding from State and Federal sources will assure that burnout, among our service providers, becomes the exception rather than the rule.

Policy development and formulation. As the State of Missouri continues to implement the provision of Public Law 94–142, there is no question as to our need for continuing technical assistance, direction and leadership to meet the needs of all of our handicapped students. I fully realize that this legislation is a developing and evolving master plan which represents the wisdom of Congress, concerned parents and school personnel across the United States. There appears to be a continuous and important need for the U.S. Department of Education Office of Special Education and Rehab Services to identify as one of its priorities the emphasis on clear policy formulation with appropriate input from various attending representative groups. Timely, consistent, and appropriate actions on the part of those officials will be helpful if the States are to meet the needs of these children.

Parent awareness and participation. Obviously when the Congress deliberated and made its decisions in the past on Public Law 94-142, there was a tremendous input on the part of the parents. One of the fundamental principles established by the act was that parents or guardians of handicapped and severely handicapped children were to be equal participants in the design of their children's special education program. The act requires communication and discussion between school and home in order that the handicapped student benefit from the efforts of both. The Missouri Department of Elementary and Secondary Education acts as a recipient of complaint and concerns from parents and advocacy groups. Analysis of the complaints and allegations made by parents discloses one consistent finding, the parents of those youngsters do not appear to be well informed as to the rights, privileges and responsibilities they are provided under the provisions of this legislation. This is not to say that national, State or local effort regarding parental awareness have not been planned nor implemented. What does appear to be needed is a new and different approach to awareness.

With an informed, knowledgeable citizenry involved in the planning and implementation of a handicapped child's educational program, the goal of a free appropriate public education can well be achieved. The new and different awareness program should reflect a goal of achieving a community, a local community, sense of ownership. Something that I feel they do not have right now is that community ownership in the program, the local school district's special ed program. And nurturing of that program, just as they nurture the football team and the debate team, to foster the development of these children. Quality education programming is a community responsibility and requires a knowledgeable citizenry for continuing support.

Gentlemen, I appreciate this opportunity to present these remarks. I hope this information will assist you in furthering the cause of this legislation.

Thank you.

[The prepared testimony of Dr. Roland J. Werner, Jr. follows:]

Prepared Testimony of Dr. Roland J. Werner, Jr., Director of Special Education, Missouri Department of Elementary and Secondary Education

Congressman Simon and Congressman Coleman:

Thank you for the opportunity to present information to you and to the Congress regarding issues affecting the level of implementation of "The Education For All Handicapped Children Act of 1975", PL 94-142, in the State of Missouri.

My name is Roland Werner. For the past five years I have served as the Director of Special Education for the Missouri Department of Elementary and Secondary Education. The State Board of Education is responsible for assuring that each local school district complies with the provisions of PL 94-142. Missouri has 554 school districts with an enrollment of approximately 873,000 students. Our public schools provided special education and related services to over 94,000 handicapped and severely handicapped children and youth during the last school year. The State of Missouri expended $57 million in Exceptional Pupil Aid during the last school year (1979-80) to assist districts in serving handicapped and severely handicapped children and youth. In addition, the state received $20.5 million from PL 94-142. The Department estimates that approximately $64 million will be paid to districts for the operation of special programs during the current school year from state Exceptional Pupil Aid with an additional $21.5 million to be made available from PL 94-142.

The U.S. Congress, in approving PL 94-142, agreed to provide the funds necessary to assist states in assuring a free appropriate public education for every handicapped and severely handicapped child. For the current fiscal year, the Act authorizes funds equal to:

> ". . . the number of handicapped children ages 3 - 21 receiving special education and related services multiplied by 30 per centum of the average per pupil expenditure in public elementary and secondary schools in the United States."
>
> Section 611 of PL 94-142.

For the State of Missouri that authorization level represents approximately $56.4 million if the average per pupil expenditure is $2,000.

The issues which are to be discussed, in most instances, can be solved by state and local educational agencies if the necessary funds become available to serve our handicapped children.

I. Extended School Term Services

The court action in the Armstrong v. Kline decision requiring local school districts in Pennsylvania to extend the school term for handicapped and severely handicapped children has initiated a series of due process hearings across our state on this issue. Currently, Missouri statutes require local school districts to provide all students at least 174 days of instruction within a term of at least 180 days. There are a number of effects that the Armstrong v. Kline decision will have across our state. First, we must validate the claim that by extending the school term educational regression will be lessened or not occur. Perhaps a better answer than the extension of a school term for more than 180 days is a rescheduling of the school term which would provide for briefer respites of time than the 90 day period we currently experience during the summer months.

Second, successful management techniques need to be developed which will lessen educational regression of handicapped and severely handicapped children and youth. Such techniques might include procedures that parents, family, and community service agencies could provide during non-educational periods. Cooperative efforts between schools and other public agencies to implement such a "total treatment plan" is well within the spirit of PL 94-142.

Third, the continuing and intense educational activities required in the education of handicapped and severely handicapped children and youth take their toll on professional and support staff in the classroom. The extension of services could seriously affect the emotional and physical well-being of many practicing educators. We must keep this in mind during any discussion and decision-making activities concerning extended school term services.

The availability of funds that are required to carry out such services should be provided jointly by the U.S. Congress and state legislatures. The U.S. Congress initiated the Act to assure that all handicapped and severely handicapped children have available a free appropriate public education. States, through their boards of education, have accepted that responsibility. Jointly they can provide the necessary funding to meet these needs.

II. Defining Educational Related Services

Many of the handicapped students who receive special education services from the public schools of our state are also in need of related services if their program is to be appropriate. The act defines related services as:

> "transportation and such developmental, corrective, and other support services (including speech pathology and audiology, psychological services, physical and occupational therapy, recreational, medical and counseling services, except that such MEDICAL SERVICES SHALL BE FOR DIAGNOSTIC AND EVALUATION PURPOSES ONLY) as may be required to assist a handicapped child to benefit from special education, and includes the early identification and assessment of handicapping conditions in children."
>
> Section 4, (18), PL 94-142 (emphasis added).

In general, local school districts have not been hesitant to provide related services to the handicapped and severely handicapped students enrolled in their special education program. There are occasions when local school districts receive a handicapped student in its program in need of related services which do not specifically meet the categories defined by the Act. Some students require services such as catheterization, blood transfusion, aspiration of tracheotomies and psychotherapy if they are to participate in the educational programs at the public school. There has been no resolution to the question of whether these and similar services are educational or medical in nature or whether they were intended to be included in the definition of related services.

I am aware of the initial efforts of the U.S. Department of Education to study the issue. A possible solution to the question is the development of clear definitions of related services authorized under the Act which should be provided by school districts and the development of working agreements between education and other service agencies to provide those necessary services which are non-educational but required if the student is to remain in the least restrictive environment. School districts should not be required to act as medical clinics, assume the liability that such services demand, nor diffuse the already limited educational dollar in the process.

III. Teacher Availability and Burnout

In recent months a new term has begun to become common to the educational community: teacher burnout. The term can be defined as a general pervasive feeling of excessive workload, non-appreciation, lack of progress in meeting stated and/or personalized goals, and lack of sufficient salary and benefits for the efforts and products achieved. Easily susceptible to burnout are special education classroom teachers, their classroom aides, and those other personnel who provide special education and related services to handicapped and severely handicapped children and youth. Yet these same personnel are the foundation of this state's special education program.

A continuous effort needs to be made to provide necessary classroom resources to these personnel. Appropriate instructional materials, equipment, and facilities are priority items in the provision of a free appropriate public education to our handicapped students. Appropriate levels of sufficiently trained and qualified personnel are needed. Yet, these basic items, the very ingredients that will mix together to form a free appropriate public education, are not available unless sufficient funds find their way to the school districts. Sufficient funding from state and federal sources will assure that burnout, among service providers, becomes the exception rather than the rule.

IV. Policy Development and Formulation

As the State of Missouri continues to implement the provisions of PL 94-142, there is no question as to our need for continuing technical assistance, direction and leadership to meet the needs of all of our handicapped and severely handicapped children and youth. I fully realize that this legislation is a developing and evolving master plan which represents the wisdom of the U.S. Congress, concerned parents, and school personnel across the United States. There appears to be a continuous and important need for the U.S. Department of Education to identify as one of its priorities the emphasis on clear policy formulation with appropriate input from various attending representative groups. Timely, consistent, and appropriate actions on the part of officials from the U.S. Office of Special Education will be helpful if the states are to meet the needs of these children.

V. Parent Awareness and Participation

One of the fundamental principles established by the Act was that the parents or guardians of handicapped and severely handicapped children were to be equal participants in the design of their child's special education program. The Act requires communication and discussion between school and home in order that the handicapped student benefit from the efforts of both. The Department of Elementary and Secondary Education acts as a recipient of complaints and concerns from parents and advocacy groups. Analysis of the complaints and allegations made by parents discloses one consistent finding: the parents of handicapped and severely handicapped children and youth do not appear to be well-informed as to the rights, privileges and responsibilities that they are provided through PL 94-142. This is not to say that national, state or local efforts regarding parental awareness have not been planned or implemented. What does appear to be needed is a new and different approach to awareness.

With an informed, knowledgeable citizenry involved in the planning and implementation of a handicapped child's educational program, the goal of a free appropriate public education can be achieved. The new and different awareness program should reflect a goal of achieving a community sense of ownership in the local school district's special education program and a nurturing of that program to foster the development of the handicapped students who participate in that special education service. Quality educational programming is a community responsibility and, in that sense, requires a knowledgeable citizenry for continuing support.

Congressman Simon and Congressman Coleman, and others, thank you for this opportunity to present these remarks and this testimony. I hope the information will assist you in taking appropriate legislative actions which will assure the provision of free appropriate public education services to all handicapped and severely handicapped children and youth.

Mr. SIMON. Let me mention that we do have someone here to provide sign interpreting for those who may have hearing disabilities, Sister Anne Albrecht.

Are there those here who would like to have that?

I will ask the question again a little later, Sister. If you don't mind staying with us, we will appreciate it. Thank you for being here.

Our next witness is Dr. Raymond Waier, superintendent, North Kansas City School District, where we visited this morning a most impressive diagnostic center.

STATEMENT OF RAYMOND WAIER, SUPERINTENDENT, NORTH KANSAS CITY SCHOOL DISTRICT

Dr. WAIER. We appreciate the subcommittee's visit to our school district this morning.

My remarks are fairly long, although my own copy is somewhat shorter than the one you have in your arms, I will try and deliver the same with all the due dispatch that I can.

Mr. SIMON. Let me just add for all the future witnesses that it does help if you can summarize the statement for us because we do have some time constraints. We will enter into the record the full statement. It will be published, along with the condensation of the remarks.

Dr. WAIER. I will do so with dispatch.

I appreciate the opportunity to express my views to the members of this subcommittee. As the superintendent of the North Kansas City School District, I am pleased to have this occasion to advance a perspective regarding the implementation phase of Public Law 94-142. We in North Kansas City have special interest in programs and children affected by Public Law 94-142, in that it helps us effectively serve over 1,800 students in our district.

Contrary to conventional wisdom, parenting and childhood in American history were not an idyllic saga. In colonial America, the infant mortality was high and science was yet to teach us how to maintain a child's physical health or mental health, for pediatrics was unknown until almost 1900. Childhood encompassed a short period of years and the concept of adolescence was not yet known.

Schools were considered to be but one of many educational institutions and often not the most important. Families, churches, communities, and apprenticeships exerted an equal or greater influence, in developing children into adults.

Education in America today, however, has become the broadest of concepts encompassing an unbelievable range of services and responsibilities. Educating the handicapped is one of those responsibilities. Forty-two years ago as a first grader, I encountered a handicapped student for the first time. His name is not important. He was mentally retarded. Each day he came to school and took his seat by the teacher's desk where she gave him some paper and crayons and he amused himself by drawing pictures. We had no teachers trained to deal with his handicap. When he became a bother, he was sent out of the room. If the weather was pleasant, he sat under a tree on the playground. When winter came, he sat in the hall. The teacher didn't want him in class and the children followed the teacher's example. He left school before the end of the year and never returned. And so it was for many children. From that day until I completed high school, I saw, only occasionally, moderately handicapped children in the school, usually mentally retarded children. I sometimes saw worse cases around town, but not in school, for society hid them or agencies other than the public schools served them.

The picture I portray was not all that unusual for the time. It took a long time and a great deal of enlightened effort to get where we are today in the education of the handicapped. As you probably know, real progress in educating the handicapped did not occur until the late 1960's or 1970's.

Given this dismal record of dealing with the handicapped, one would think current efforts would receive unrestrained applause. I my opinion, there is sufficient reason for such applause. Yet, there is also reason to be disturbed by recent developments cast in the name of progress. There is reason to listen intently to educators in the field who would attempt to persuade you that we can't be everything to everybody, that we are not the only or even the best agency to solve every social problem in this country. We would further like to persuade you to look carefully at both the positive and negative consequences of the recent handicapped legislation.

For 3 years, schools have dealt with two powerful pieces of legislation, section 504 of the Rehabilitation Act and Public Law 94-142, the Education for All Handicapped Act. This legislation is among the most important and significant ever enacted in the field of education. Section 504 and Public Law 94-142 have brought needed aid to the handicapped but they have, at the same time, virtually negated local decisionmaking at the public school level. Even the most outspoken educators willing to be critical of some aspects of this legislation are fearful that the advocate groups, the media, and Federal bureaucrats will focus upon them as insensitive, inhumane and unsympathetic to the needs of all children. Wishing to avoid such wrath, their voices are too often stilled.

Public Law 94-142, as you know, was enacted after intensive lobbying by special interest groups. The intentions of the Congress were noble, but may I suggest that these groups did not always provide Congress with accurate information about the projected or existing needs of the handicapped. Shortly after the legislation went into effect, Representative Quie, now Governor of Minnesota, admitted that the law had been passed without adequate assessment of services already available to the handicapped. He said, and I quote, "Congress failed to take into account the great strides which States have taken in recent years in the education of the handicapped." For example, when Public Law 94-142 was passed, Missouri had for 3 years operated programs for the handicapped under one of the most progressive laws in the Nation.

The estimates of the numbers of handicapped individuals not being served by the schools were grossly exaggerated in reports to Congress. This created an out-of-proportion sense of urgency and not a little hostility toward the schools. Too late, the facts have proven otherwise. The Congress was told that there were 8 million handicapped children in the United States. The actual unduplicated count of handicapped children for 1977–78 was only 3.6 million. In our district, with a loss of almost 3,000 students in 4 years, due to our decline, our handicapped population remains relatively the same. Given enough opportunity, we may find a handicapping label for every child we serve, for it has become quite fashionable.

It is true that the handicapped have not received the help they deserve from many school districts. However, in many districts there are exceptions and they have for years served the needs of the handicapped well indeed. The impact of this law falls equally on those districts which have served the handicapped well and those which have done little, though Federal financial assistance is unevenly distributed.

The financial administration of Public Law 94–142, at least in Missouri, tends to reward those districts which have failed to make a reasonable effort and penalizes districts which have done the most on their own, a point worthy of your investigation, since the end result is to curtail general education progress where school finances are tight in order to provide a superb level of service to the handicapped. Is it any wonder that I believe the term "general welfare" needs to be returned to our vocabulary as a legitimate concept.

When attempting to correct past inequities in our society, overreaction has generally been given. The aftermath of Public Law 94–142 has shown it to be no exception. Well-organized hostile pressure groups have emerged, advocacy agencies have offered their services to parents of the handicapped, and I might say a lucrative field of legal practice has also emerged. We are seeing a very unpleasant we/they situation take shape. Parents are misled and public education undermined. Couple these conditions with the already well-established demands of society for virtually every conceivable service from public education, and we have the proper mix for further damage to the faltering credibility of the public school enterprise.

Schools today attempt to be all things to all people. We have almost guaranteed failure by asking the impossible. You could not possibly understand the weight of your praiseworthy but hopeless and relentless demands upon public education to solve every problem.

Parents have demanded and received what they want. Many have abdicated their responsibility to direct their children's lives. The result is a proliferation of services which schools are not designed to provide and which should be the responsibility of the home or another agency better equipped to do the job. Never has this been more amply demonstrated than in the requirements now made on schools in the name of educating the handicapped. Schools are being inundated with demands for services not intended either by the letter or spirit of the law, services which we are not equipped to provide and which we must deny. The consequence of denial is usually followed by shouts of "my right to free services, guaranteed by the Federal Government, is being withheld." We watch our budgets contract for the nonhandicapped as funds are siphoned off to special programs.

Something must be done. We need to remember that the law requires only that we provide those services essential to assure the child the opportunity to receive an appropriate education. Our emphasis should be on what is needed for the educational development of the child. Helping the orthopedically handicapped child compete physically with the normal child may be a desirable side benefit, but it must not be a primary objective of the school. Before a school district overextends itself, it should be remembered that Federal regulations will likely be with us forever. Funding may or may not be. Deficit spending is not a luxury of the local educational unit.

Each year the North Kansas City School District serves approximately 1,800 handicapped students. Last year all the handicapped were placed to the satisfaction of the parents or guardians. During the 1978–79 school year, the district served 1,793 handicapped youngsters. 1,790 were placed to the satisfaction of parent or guardian, three were not. One placement was settled at the first level of appeal through a conference and the remaining two cases proceeded to the second and third levels of appeal, with one going to Federal court.

We think this is an excellent record, but as can be seen even with the best of efforts a district may find itself enmeshed in the appeals process.

The district may be asked to approve a placement the staff believes is not in the best interest of the child. For example, the parent may demand extensive or complete mainstreaming, which may, in fact, be the most restrictive environment for that particular student. We cannot in good conscience accede to every parent request.

The district may be asked to provide services which are not needed to assure an appropriate education, such as physical therapy, psychotherapy at $115 an hour, a single full-time teacher for one child only, et cetera.

The district may be asked to provide a service which a school district should not engage in, such as medical practice.

For whatever reason, given the current inclination toward litigation and the activities and strong encouragement of advocacy groups, a district may find itself engaged in a long process of hearings, appeals, and costly court action. As an interesting sidenote, we are beginning to see signs of rebellion from parents of nonhandicapped children who sense, quite accurately, that their children are being deprived of needed attention.

The North Kansas City District serves 17,000 students, approximately 10 to 12 percent of whom are handicapped. The district operates the second largest program for the handicapped in the State. North Kansas City's effort in educating the handicapped predates by more than 20 years Federal efforts through section 504 and Public Law 94–142. Our commitment precedes the State of Missouri's official State legislation by over 15 years. Serving all types of exceptionality is not new to us. We are committed to an aggressive stance in improving educational opportunities for the handicapped.

Despite the record of serving handicapped children with only six placement appeals since the enactment of Public Law 94–142, the district has been constantly hamstrung by the efforts of the Office of Civil Rights, which intervenes without regard for the mechanism of the appeal procedure and always with a preconceived presumption of guilt on the part of school officials.

With regional offices of HEW and OCR located only minutes from any citizen in the district, each agency is extremely accessible. Once reported, any kind of allegation of wrongdoing launches a full investigation on the part of OCR, completely circumventing district appeal mechanisms. In my opinion, Federal bureaucrats are easily manipulated by the complainant, media pressure and vested-interest group influence. With the school district cast in the role of villain, the easy answer is to capitulate, no matter that to do so may hurt the child or expend funds beyond the requirements of the law. It was against this backdrop that the district found itself involved in a dispute with parents over the provision of medical care for a handicapped child. What we learned from this experience may be valuable to this committee.

Regardless of the fact that this child's placement was one of the most clearcut and least questionable of any of our handicapped students, our district was dragged through 3 years of hearings, lawsuits and harassment by the Office of Civil Rights. Over the 3 years of this case, the district spent a total of $13,700 and compiled 2,061 pages of documentation and was subjected to constant battering and intimidation by the media.

We know that it is not necessary to agree to a service simply because the parent requested it. But we also know that many parents have been told that under the law they can demand and receive virtually any service they desire. With many districts, it is simpler to provide the service than to face the consequences of saying no.

We know that the parameters of Federal and State law are still being established. We find to our dismay that Federal officials often don't agree with each other on the matter of interpretation. "Is there anyone at the helm" seems a reasonable question. We understand that court cases are continuing to further shape the requirements of the law. The suit against our district was ultimately withdrawn and a few months later an identical suit, *Tatro* v. *Texas*, was decided in favor of the local school district. However, very few districts have the resources or determination it takes to defend themselves in such matters.

After working with Public Law 94–142 for the past 3 years, I have reached some perceptions I would like to share with you.

Without the law, many school districts would have continued to do little or nothing for the handicapped and that would unquestionably be wrong. But the law falls as heavily upon districts which have made an honest effort to serve the handicapped as to those which have not. The effect is to financially penalize districts which have, on their own and before any Federal aid, attempted to serve the handicapped.

The law has raised the country's consciousness about the handicapped. They can no longer be ignored. That is proper and an enormously positive effect of the law.

The loss of decisionmaking authority by the local district is most disturbing. Federal legislation, litigation, Federal agencies, and advocacy groups are exacting a horrendous price. It simply is wrong to deny decisionmaking authority or appeal procedures to the agency which must deliver services to the child.

The ability of the parents of one child to literally hamstring a school district for months or years simply because they disagree with placement of services and, in the process, force the district to spend thousands of dollars to defend itself is wrong. I have difficulty believing Congress ever intended this to happen.

The inequity of a law, which is weighted almost totally in favor of the person lodging a complaint against the school district, at the same time denying to the district the most rudimentary elements of due process, is not in the best interest any anyone, least of all children.

Mainstreaming is a primary concept in the law and is a meaningful practice, but must depend upon the student's ability to benefit. By itself it will solve nothing.

This zealous and narrowly conceived law, its regulations and the administration of the regulations are not only concerned with assuring the child's opportunity to an education, but reach into the classroom to dictate what shall be taught, when it shall be taught, how and in what setting it shall be taught, and by whom it shall be taught, as interpreted by people far removed from the classroom.

I indicated at the beginning of this testimony that I thought no group of students had been more discriminated against than the handicapped. Major efforts were required to correct this problem. But somehow some degree of practical sanity must be introduced into the process. We simply cannot continue to accommodate the level of demand we are now seeing without reducing services to children without handicaps, and even now they suffer.

It is in the nature of teachers to answer requests and solve problems. We have promised so much. We have never said we can't. We have always said we will try. But we cannot do everything. We need to learn how to say "no" to some requests and the law needs to recognize that at times "no" is the appropriate answer. Perhaps then we can concentrate on those things we are equipped to do.

We ought to be held accountable for many of society's priorities, but there must be a limit.

This subcommittee may be able to influence the future course of events under these laws. I respectfully petition this committee to address the following concerns:

There should be a recognition that "due process" is a two-sided coin. A school district has every much a right as a parent to be protected from arbitrariness.

Federal bureaucrats are often totally ignorant of the educational enterprise and how it functions. Perhaps an ombudsman concept, when HEW or OCR are asked to intervene, is a viable solution.

The appeals process is unduly long, costly, and burdensome. It needs to be revised.

The appeals process should prohibit Federal agency action until it is exhausted. Currently, it causes the school district to defend itself from two independent attacks or, worse yet, a coalition of a Federal agency and the parent. This has the effect of stifling communications at too early a stage in the conflict resolution process.

There needs to be a careful review and revision of the regulations promulgated under Public Law 94–142 to insure a fit within the spirit and intent of the law and, particularly an articulation of its limitations.

This concludes my testimony. Thank you.

[The prepared testimony of Dr. Raymond D. Waier follows:]

PREPARED TESTIMONY OF DR. RAYMOND D. WAIER, SUPERINTENDENT OF SCHOOLS, NORTH KANSAS CITY SCHOOL DISTRICT, KANSAS CITY, MO.

I appreciate the opportunity to express my views to the members of this subcommittee. As the superintendent of the North Kansas City School District, I am pleased to have this occasion to advance a perspective regarding the implementation phase of P.L. 94-142. We in North Kansas City have special interest in programs and children affected by P.L. 94-142, in that it helps us effectively serve over 1,800 students in our district.

Contrary to conventional wisdom, parenting and childhood in American history were not an idyllic saga. In colonial America, the infant mortality was high and science was yet to teach us how to maintain a child's physical health, for pediatrics was unknown until almost 1900. Children were believed to be "good" only when they conformed to a rigidly conditioned environment. It was commonly believed that strict discipline and frequent punishment were the proper ingredients to train them and prepare them to deal with the harsh realities of the adult world. The power of parents was absolute and most children who survived disease were put to work as soon as possible to enhance the economic status of the family. What was considered "childhood" encompassed a short period of years and the concept of adolescence was not yet known.

Schools were considered to be but one of many educational institutions, and often not the most important. Families, churches, communities, and apprenticeships exerted an equal or greater influence in developing children into adults.

Free and compulsory education in America is only a little over one hundred years old. Education in America today, however, has become the broadest of concepts, encompassing an unbelievable range of services and responsibilities. Educating the handicapped is one of those responsibilities. Forty-two years ago as a first grader, I encountered a handicapped student for the first time. His name is not important. He was mentally retarded. Each day he came to school and took his seat by the teacher's desk where she gave him some paper and crayons, and he amused himself drawing pictures. We had no teachers trained to deal with his handicap. When he became a bother, he was sent out of the room. If the weather was pleasant, he sat under a tree on the playground. When winter came, he sat in the hall. The teacher didn't want him in class; the children followed the teacher's example. He left school before the end of the year and never returned . . . and so it was for many children. From that day until I completed high school, I saw, only occasionally, moderately handicapped children in school - usually mentally retarded children. I sometimes saw worse cases around town, but not in school, for society hid them or agencies other than the public schools served them.

The picture I portray was not all that unusual for the time. It took a long time and a great deal of enlightened effort to get where we are today in the education of the handicapped. As you probably know, real progress in educating the handicapped did not occur until the late 60's or 70's.

Given this dismal record of dealing with the handicapped, one would think current efforts would receive unrestrained applause. In my opinion, there is sufficient reason for such applause. Yet, there is also reason to be disturbed by recent developments cast in the name of progress. There is reason to listen intently to educators in the field who would attempt to persuade you that we can't be everything to everybody; that we are not the only or even the best agency to solve every social problem in this country. We would further like to persuade you to look carefully at both the positive and negative consequences of the recent handicapped legislation.

For three years, schools have dealt with two powerful pieces of legislation - Section 504 of the Rehabilitation Act of 1973 and P.L. 94-142, the Education for All Handicapped Act. This legislation is among the most important and significant ever enacted in the field of education. Section 504 and P.L. 94-142 have brought needed aid to the handicapped but have, at the same time, virtually negated local decision-making at the public school level. Even the most outspoken educators willing to be critical of some aspects of this legislation are fearful that advocate groups, the media, and federal bureaucrats will focus upon them as insensitive, inhumane, and unsympathetic to the needs of all children. Wishing to avoid such wrath, their voices are too often stilled.

P.L. 94-142, as you know, was enacted after intensive lobbying by special interest groups. The intentions of the Congress were noble, but may I suggest that these groups did not always provide Congress with accurate information about the projected or existing needs of the handicapped. Shortly after the legislation went into effect, Representative Quie (now governor) of Minnesota admitted that the law had been passed without adequate assessment of services already available to the handicapped. He said, and I quote, "Congress failed to take into account the great strides which states have taken in recent years in the education of the handicapped." For example, when 94-142 was passed, Missouri had for three years operated programs for the handicapped under one of the most progressive laws in the nation.

The estimates of the numbers of handicapped individuals not being served by the schools were grossly exaggerated in reports to Congress. This created an out-of-proportion sense of urgency and not a little hostility toward the schools. Too late, the facts have proven otherwise. The Congress was told that there were 8 million handicapped children in the United States. Upon the basis of this estimate, the initial funding for P.L. 94-142 was determined. After the law was passed, some 400 studies of the prevalence of handicapped children indicated a child count of from 4.9 million to 10.2 million. The actual unduplicated count of handicapped children for 1977-78 was only 3.6 million. In our district, with a loss of almost 3,000 students in four years, our handicapped population remains relatively the same. Given enough opportunity, we may find a handicapping label for every child we serve, for it has become fashionable.

In my opinion, two very basic human feelings played a large part in the enactment of these two laws which are having such an impact upon the schools. Those feelings are sympathy and guilt. Any of us should sympathize, empathize, and be moved to action for children who possess any kind of handicap. With our history, it is not at all unusual that we should feel collective guilt. It is true that the handicapped have simply not received the help they deserved from many school districts. However, many districts are exceptions and have for years served the needs of the handicapped very well indeed. The impact of this law falls equally on those districts which have served the handicapped well and those which have done little, though federal financial assistance is unevenly distributed. The financial administration of 94-142, at least in Missouri, tends to reward those districts which have failed to make a reasonable effort and penalizes districts which have done the most on their own - a point worthy of your investigation, since the end result is to curtail general education progress where school district finances are tight, in order to provide a superb level of service to the handicapped. Is it any wonder that I believe the term "general welfare" needs to be returned to our vocabulary as a legitimate concept.

When attempting to correct past inequities in our society, overreaction has generally been a given. The aftermath of 94-142 has shown it to be no exception. Well-organized hostile pressure groups have emerged, advocacy agencies have offered their services to parents of the handicapped, and I might say a lucrative field of legal practice has also emerged. We are seeing a very unpleasant we-they situation take shape. Parents are mislead and public education undermined. Couple these conditions with the already well-established demands of society for virtually every conceivable service from public education, and we have the proper mix for further damage to the faltering credibility of the public school enterprise.

Schools today attempt to be all things to all people. If a student wants to go to college, the school tries to prepare him. If he wants to learn welding, it teaches him to weld. It trains him to drive a car and balance his checkbook. It instructs him in sex and buying a home. And the school is criticized for doing all these things badly. We have almost guaranteed failure by asking the impossible. You could not possibly understand the weight of your praiseworthy but hopeless and relentless demands upon public education to solve every problem. We must remember that any organization functions best when it is required to do those things for which it was created.

Parents have demanded - and received - what they want. Many have abdicated their responsibility to direct their children's lives. The result is a proliferation of services which schools are not designed to provide and which should be the responsibility of the home or another agency better equipped to do the job. Never has this been more amply demonstrated than in the requirements now made on schools in the name of educating the handicapped. Schools are being inundated with demands for services not intended either by the letter or spirit of the law - services we are not equipped to provide and which we must deny. The consequence of denial is usually followed by shouts of "my right to free services, guaranteed by the federal government, is being withheld." We watch our budgets contract for the nonhandicapped as funds are siphoned off to special programs.

Something must be done. We need to remember that the law requires only that we provide those services essential to assure the child the opportunity to receive an appropriate education. Our emphasis should be on what is needed for the educational development of the child. Helping the orthopedically handicapped child compete physically with the normal child may be a desirable side benefit, but it must not be a primary objective of the school. Before a school district overextends itself, it should be remembered that federal regulations will likely be with us forever, funding may or may not be. Deficit spending is not a luxury of the local educational unit.

Each year the North Kansas City School District serves approximately 1,800 handicapped students. Last year all the handicapped were placed to the satisfaction of the parents or guardians. During the 1978-79 school year, the district served 1,793 handicapped youngsters. One thousand seven hundred ninety (1,790) were placed to the satisfaction of parent or guardian and school personnel through cooperative efforts at all levels. Three were not. One placement was settled at the first level of appeal through a conference, and the remaining two cases proceeded to the second and third levels of appeal, with one going to federal court.

This is an excellent record, but as can be seen, even with the best of efforts a district may find itself enmeshed in the appeals process:

1. The district may be asked to approve a placement the staff believes is not in the best interest of the child. For example, the parent may demand extensive or complete mainstreaming which may, in fact, be the most restrictive environment for that particular student. We cannot in good conscience accede to every parent request.
2. The district may be asked to provide services which are not needed to assure an appropriate education, such as physical therapy, psychotherapy at $115 an hour, a single full-time teacher for one child only, etc.
3. The district may be asked to provide a service which a school district should not engage in, such as a medical practice.

For whatever reason, given the current inclination toward litigation and the activities and strong encouragement of advocacy groups, a district may find itself engaged in a long process of hearings, appeals, and costly court action. As an interesting side note, we are beginning to see signs of rebellion from parents of nonhandicapped children who sense, quite accurately, that their children are being deprived of needed attention.

The North Kansas City School District serves 17,000 students, approximately 10-12% of whom are handicapped. The district operates the second largest program for the handicapped in the state. North Kansas City's effort in educating the handicapped predates by more than twenty years federal efforts through 504 and 94-142. Our commitment precedes the State of Missouri's official state legislation by over fifteen years. Serving all types of exceptionality is not new to us. We are committed to an aggressive stance in improving educational opportunities for the handicapped.

Despite the record of serving handicapped children with only six placement appeals since the enactment of 94-142, the district has been constantly hamstrung by the efforts of the Office of Civil Rights which intervenes without regard for the mechanism of the appeal procedure and always with a preconceived presumption of guilt on the part of school officials.

With regional offices of HEW and OCR located only minutes from any citizen in the district, each agency is extremely accessible. Once reported, any kind of allegation of wrongdoing launches a full investigation on the part of OCR, completely circumventing district appeal mechanisms. In my opinion, federal bureaucrats are easily manipulated by the complainant, media pressure, and vested interest group influence. With the school district cast in the role of villain, the easy answer is to capitulate, no matter that to do so may hurt the child or expend funds beyond the requirements of the law. It was against this backdrop that the district found itself involved in a dispute with parents over the provision of medical care for a handicapped child. What we learned from this experience may be valuable to this committee.

Regardless of the fact that this child's placement was one of the most clearcut and least questionable of any of our handicapped students, our district was dragged through three years of hearings, lawsuits, and harassment by the Office of Civil Rights. Over the three years of this case, the district spent a total of $13,700 and compiled 2,061 pages of documentation, and was subjected to constant battering and intimidation by the media.

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After working with P.L. 94-142 for the past three years, I have reached some perceptions I would like to share with you:

1. Without the law, many school districts would have continued to do little or nothing for the handicapped, and that would unquestionably be wrong. But the law falls as heavily upon districts which have made an honest effort to serve the handicapped as on those which have not. The effect is to financially penalize districts which have, on their own and before any federal financial aid, attempted to serve the handicapped.
2. The law has raised the country's consciousness about the handicapped. They can no longer be ignored. That is proper and an enormously positive effect of the law.
3. The loss of decision-making authority by the local district is most disturbing. Federal legislation, litigation, federal agencies, and advocacy groups are exacting a horrendous price. It simply is wrong to deny decision-making authority or appeal procedures to the

agency which must deliver services to the child.

4. The ability of the parents of one child to literally hamstring a school district for months or years simply because they disagree with placement of services and, in the process force the district to spend thousands of dollars to defend itself, is wrong. I have difficulty believing Congress ever intended this to happen.
5. The inequity of a law, which is weighted almost totally in favor of the person lodging a complaint against the school district, at the same time denying to the district the most rudimentary elements of due process, is not in the best interest of anyone, least of all children.
6. Mainstreaming is a primary concept in the law and is a meaningful practice, but must depend upon the student's ability to benefit. By itself, it will solve nothing.

This zealous and narrowly conceived law, its regulations, and the administration of the regulations are not only concerned with assuring the child's opportunity to an education, but reach into the classroom to dictate what shall be taught, when it shall be taught, how and in what setting it shall be taught, and by whom it shall be taught, as interpreted by people far removed from the classroom.

I indicated at the beginning of this testimony that I thought no group of students had been more discriminated against than the handicapped. Major efforts were required to correct this problem. But somehow some degree of practical sanity must be introduced into the process. We simply cannot continue to accommodate the level of demand we are now seeing without reducing services to children without handicaps, and even now they suffer.

It is in the nature of teachers to answer requests and solve problems. We have promised so much. We've never said we can't. We've always said we'll try. But we cannot do everything. We need to learn how to say "no" to some requests and the law needs to recognize that at times no is the appropriate answer. Perhaps, then, we can concentrate on those things we are equipped to do.

We ought to be held accountable for many of society's priorities, but there must be a limit.

This subcommittee may be able to influence the future course of events under these laws. I respectfully petition this committee to address the following concerns:

1. There should be a recognition that "due process" is a two-sided coin. A school district has every much a right as a parent to be protected from arbitrariness.
2. Federal bureaucrats are often totally ignorant of the educational enterprise and how it functions.

Perhaps, an ombudsman concept, when HEW or OCR are asked to intervene, is a viable solution.

3. The appeals process is unduly long, costly, and burdensome. It needs to be revised.
4. The appeals process should prohibit federal agency action until it is exhausted. Currently, it causes the school district to defend itself from two independent attacks or, worse yet, a coalition of a federal agency and the parent. This has the effect of stifling communications at too early a stage in the conflict resolution process.
5. There needs to be a careful review and revisement of the regulations promulgated under 94-142 to ensure a fit within the spirit and intent of the law and, particularly, an articulation of its limitations.

This concludes my testimony. Thank you.

Mr. SIMON. Thank you, Dr. Waier.

Our next witness is Imogene Miller, the director of special education in the Park Hill School District.

STATEMENT OF IMOGENE MILLER, DIRECTOR OF SPECIAL EDUCATION, PARK HILL SCHOOL DISTRICT

Ms. MILLER. Thank you.

As local special education director in the Park Hill School District and as president of the Missouri Council of Administrators of Special Education, let me express appreciation to this subcommittee for providing this opportunity for further dialog about the far-reaching issues of Public Law 94-142.

Mr. Coleman, thank you for your involvement in the cause of education. Let me encourage you to speak up with interest and support to this particular segment of your constituency.

The intent and spirit of Public Law 94-142, which guarantees the right of free appropriate public education program, is commendable. Let me speak to some of the positive results which we have identified in Park Hill School District.

More handicapped children have been identified and are being served in appropriate programs. When comparing numbers taken from 1976 and 1977—comparing them with those of 1979 and 1980—we found the numbers identified had increased 60 percent. The number of those served have increased 26 percent and the teaching staff has almost doubled in the same period.

Evaluative procedures indicate the effort has brought about change. Improved communications among educators and between educators and parents has occurred. There is a frequent interaction on a more meaningful level as solutions and approaches are determined. In most cases, over 99 percent, cooperation has been excellent.

The awareness of various handicapping conditions and the services available to meet those needs have increased significantly throughout the district. Perhaps the most significant improvement is attitudinal. An increasing number of educators are involved in some phase of screening referral evaluation, IEP development and/or the placement process. This support is fostered throughout the district by board members, administration, and parent groups.

Additional assistance has been provided by the special education division of the Missouri State Department of Elementary and Secondary Education. This help has been in the form of discretionary grants, technical assistance, and general informational conferences.

To comply with the letter of the law creates some problems. We chose to address three; they are in the areas of funding, related services, and services for the severely and profoundly handicapped.

Funds to finance the programs and services mandated by Public Law 94-142 are presently far below the recommended appropriation schedule established by Congress when the law was enacted. Originally, the funds generated by the act were intended to cover excess costs. In reality, Federal and State funding for excess costs falls far short of covering the additional expenditures being assumed by local school districts. It is just not possible for school districts, funded as they are in Missouri by property taxes, to meet all these mandates and still maintain existing programs.

The staff time involved in assessment and conferences related to the individual educational program—or the IEP—creates scheduling and management problems. Administrative and supervisory support spent in the preparation, coordination, implementation, and monitoring of the components of the compliance plan requires large capital outlays. This time and effort costs the local education agency additional moneys.

Teacher training, both pre-service and in-service, is affected by limited finances. The least restrictive environment, not referred to in the law as mainstreaming, requires—the requirement becomes more difficult to implement when teachers have not had an opportunity to develop the skills necessary to successfully individualize instructions for all students. A comprehensive system of personal development is mandated by this law.

Required components—that is, awareness, due process, procedural safeguards, hearing officer training, to name a few—cannot be provided at the present funding level.

Related service: The results of some State and Federal litigation indicates school districts are or will be held responsible for services, procedures that are not educational. These services may rather be the responsibility of social, medical, or mental health professionals. Policies and guidelines must be developed at the Federal and State levels to address a resolution to the financial and service delivery responsibilities.

Finally, services for the severely and profoundly handicapped: The Federal law places the responsibility of these students with the local education agency, but Missouri law deprives the local agency of the authority to determine appropriate placement, by giving responsibility for the management of these programs to the Missouri State Public Law 94–142 does not differentiate between degrees of handicapped conditions.

The Missouri State Department of Elementary and Secondary Education serves these severely handicapped students in schools located throughout the State. Students served in these schools are segregated from all other students.

Let me say in summary that the public schools have demonstrated a willingness to serve exceptional children, by their good-faith efforts to fully comply with the Federal mandate. The positive impact of the Education for All Handicapped Children Act can be eroded if the funds for regular programs are diminished to support special education. The loss of the resource support of regular educators could be detrimental. We feel that these implications which would divide educators are not being addressed. Full funding or modifications in the law are the alternative.

Thank you.

Mr. SIMON. Thank you very much.

Charles Cummings, the director of special services in the St. Joseph School District.

STATEMENT OF CHARLES CUMMINGS, DIRECTOR OF SPECIAL SERVICES, SAINT JOSEPH SCHOOL DISTRICT

Mr. CUMMINGS. Thank you.

As director of special education, I am pleased this morning to be asked to speak to this committee.

Public Law 94-142, I think everyone will agree, is landmark legislation and if it is sensibly implemented it will contribute to the education of all children. I have heard this piece of legislation called both a blessing and a curse. I assume that one of the primary reasons that hearings such as this are being held is to determine, if in fact, the impact of Public Law 94-142 does benefit the exceptional child and in what manner.

In the State of Missouri the past 10 years, I think, the State Department has demonstrated leadership in the area of special education. Missouri's mandatory special education law went into effect in July 1974, and I might add that very little of that legislation had to be amended as the result of the Federal action of 1975. During the fiscal year 1980 the State Education Agency in Missouri distributed 89 percent of the entitlement moneys to local educational agencies within this State. For fiscal year 1981 each local education agency in Missouri is receiving $205 per child.

I would like to begin my testimony by discussing some of the more positive aspects, I think, of this particular legislation.

I think that most SEAs and LEAs are doing a far better job in the area of identification, as a result of this law. Certainly local educational agencies do a more comprehensive job in making the public aware of services available. Instruments used for screening suspected handicapped children to determine the need for assessment have also benefits from the passage of this particular law.

The assessment process, I think, very well may be Public Law 94-142's greatest contribution, as a good diagnosis is the basis for quality programming. Certainly the assessment process has improved.

Public Law 94-142 has guaranteed parents that all students identified, screened, referred and found to be in need of assessment will receive a multidisciplinary diagnostic evaluation and staffing as well as evaluation.

I think that like any piece of legislation of this magnitude is not without problems. I would like to discuss a couple of those problems with you.

The first major problem that I see with the implementation of this law has already been addressed here this morning, but this is, I feel, in the area of funding.

As each of you know, Public Law 94-142 is written to help LEAs pay for the excess cost of special education and related services. The Congress established a payment formula based upon a gradually escalating percentage of the national average expenditure per public school child times the number of handicapped children being served in the school districts of each State in the Nation. That percentage was to escalate on a yearly basis until 1982, when it was to become a permanent 40 percent for that year and all subsequent years.

As each of you are aware, Congress has not appropriated the moneys that were estimated at the time this legislation was passed in Congress.

Failure by the Congress to appropriate adequate moneys for the implementation and maintenance of this new and its mandates will most certainly curtail and perhaps eliminate some of the services or programs altogether. I must point out that LEAs are often tied to local tax receipts which generally do not increase over 2 percent, and certainly they do not respond to inflation. I realize that the formula set forth in Public Law 94–142 does not guarantee actual appropriations, but I urge you, as members of this subcommittee, to recommend to Congress to increase the funding level to, at least, the level mentioned in the current formula.

The problem that I was asked to specifically address in this testimony pertains to perhaps one of the most important statements made in the law. This deals with the LEAs responsibility of providing education to exceptional children in what is known as least restrictive environment.

Mainstreaming is a term that is often misunderstood in public education. It provides for exceptional children who, once removed from regular classes, are brought back into the mainstream, whenever this is practical. This concept, as you know, aroused a great deal of misapprehension and misunderstanding among many people. I think if we are going to fulfill a promise of providing a proper education for all children, then, the legislation that created this mandate must help us to eliminate the problems that are associated with it.

In trying to prepare testimony I wasn't quite sure how to get it all together, as far as the problems and the complete changes that have resulted as a result of this particular clause and maybe the entire passage of such a comprehensive educational bill.

Dr. Sam Kirk spoke at the Council for Exceptional Children's Convention this year in Philadelphia. I think that's the best way and so, if I may, I will read you these statements that deal with the new relationships between regular and special education teachers, as a result of this legislation and that are, in fact, affecting service to children in the least restrictive environment.

> Public Law 94–142 has sounded the death knell to the traditional separation of special education and general education. General education teachers are required to call consultants in, instead of referring children out. Special education teachers must now change their roles to that of a support system for the general education teacher.
>
> The law has formalized and made mandatory a new partnership between special and regular teachers and teachers and parents.
>
> The law has mandated accountability.
>
> 94–142 is creating an impossible situation with dissidents between special and regular teachers. Classroom teachers are not obtaining the support services they need to mainstream the handicapped with their peers.
>
> Unless we at the local, state and federal level work towards changing those attitudes, then, I think the education of the handicapped in the mainstream will not succeed and I think this would be bad. We must assure that the appropriate amounts of research, as well as monies, are made available if this dream is to, in fact, become a reality. All those involved in providing mainstream education to exceptional children and youth must have a complete understanding of their new role.

Thank you.

Mr. Simon. Thank you very much. We appreciate your testimony.

[The prepared statement of Charles W. Cummings follows:]

Prepared Statement of Charles W. Cummings, Director of Special Services, the School District of Saint Joseph, Mo.

I have been asked to give some objective comments on the impact of PL 94-142. As a director of a large Missouri Urban Special Education Program, I welcome this opportunity to provide this Committee with this testimony. Saint Joseph is a mid-western community of over 80,000. The School District is currently serving the educational needs of over 13,200 students. The district employs 840 certified staff in its thirty (30) schools. In the area of Special Education, 70 staff provide Special Education and related services for approximately 1,400 handicapped children. The School District has a long tradition of providing services to special needs students, being the first district west of the Mississippi to provide any kind of specialized training for those students diagnosed handicapped. Special Education classes are provided in the following areas; specific learning disabilities, educable mentally retarded, behaviorally disordered, orthopedically handicapped/health impaired, visually impaired/blind, hearing impaired/deaf, deaf/blind/multiple handicapped, and speech and language impaired. Related services such as; psychological services, adaptive physical education, occupational therapy, physical therapy, and audiological services are also available to those students who require such support.

The State of Missouri, has in the past ten (10) years demonstrated leadership in the area of Special Education. Missouri's mandatory Special Education law went into effect in July of 1974, and I might add that very little of that legislation had to be amended as the result of the Federal Action of 1975. During the FY-80, the State Education Agency in Missouri distributed 89% of the entitlement monies to the Local Education Agency within the State. For FY-81 each Local Education Agency in Missouri is receiving $205.00 per child. I have heard this piece of legislation called both a blessing and a curse. I assume that one of the primary reasons that hearings such as this are being held is to determine, if in fact, the impact of PL 94-142 does benefit the exceptional student and in what manner.

I believe that most SEA's and LEA's are doing a far better job in the area of identification as the result of this law. The identification process is an ongoing process of locating and screening suspected handicapped children for special education services. As a result of this legislation, LEA's do a more comprehensive job in making the public aware of services available. Instruments used for screening suspected handicapped children to determine the need for assessment have also benefited from passage of PL 94-142.

Certainly one of the greatest contributions resulting from the passage of this complex legislation could be seen in the assessment process. The purpose of assessment is to identify and describe the child's educational, emotional, social, and physical strengths and weaknesses and to recommend various strategies to meet the child's needs. PL 94-142 has guaranteed parents that all students identified, screened, referred, and found to be in need of assessment will receive a multi-disciplinary diagnostic evaluation and staffing to determine their needs for specialized programs. This may very well be PL 94-142's greatest single contribution as a good diagnosis is the basis for quality programming.

When the child has been determined that he or she is in need of special support programs, placement and the placement process are critical. PL 94-142 has established an excellent framework from which all LEA's can work. Parents are given the guarantee that each child will be assured to the maximum extent appropriate, that exceptional children will be educated in the least restrictive environment.

I am quite sure that none of my statements are being read by the members of this committee for the first time. PL 94-142 was written to assure that these full service goal are in fact implemented. I believe that as we enter the 1980's, exceptional children and youth will be provided programs and services that ten (10) years ago no one would have dreamed possible. PL 94-142 has enabled districts to provide appropriate classes for all handicapped as well as the related services of adaptive physical education, audiological services, physical therapy, occupational therapy, and psychological services to name just a few. PL 94-142 monies have also provided funds for both the SEA's and the LEA's to provide extensive staff development programs.

Everyone agrees that PL 94-142 is landmark legislation and if sensibly implemented will contribute to the education of all children. Like any piece of legislation of this magnitude, it is not without its share of problems. The problems deal mainly with interpretation and implementation. As members of this sub-committee, I urge you to consider these statements when reporting the results of these regional hearings.

As the person charged with trying to implement this federal mandate, I view one of the laws most important statements as one which presents a great problem. PL 94-142, as you know, declares that all exceptional children shall be educated at public expense and that their education will be in the "Least Restrictive Environment". "Mainstreaming", a term often misunderstood in public education, provides for exceptional children who were once removed from regular classes to be brought back into the "mainstream" when ever this is practical. This concept has aroused a great deal of apprehension and misunderstanding among many teachers. If we are to fullfill the promise of providing an appropriate education for all children, then the legislation that created these problems must be used to eliminate them.

Dr. Sam Kirk, at this year's CEC Convention in Philadelphia, pinpointed the major problems that exist as a result of the mainstreaming mandate. He urged educators to look very carefully at the new relationships between regular and special education teachers as a result of this legislation. Dr. Kirk listed the problems as follows:

1. PL 94-142 has sounded the death knell for the traditional separation of special education from general education.
2. General education teachers are required to call consultants "in" instead of referring children "out".
3. Special Education teachers must now change their roles to that of a support system for the general education teacher.
4. The law has formalized and made mandatory a new partnership between special and regular teachers, teachers and parents.
5. The law has mandated accountability.
6. PL 94-142 is creating impossible situations and disonance between special and regular teachers.
7. Classroom teachers are not obtaining the support services they need to mainstream the handicapped with their peers.

Unless we at the local, state, and federal levels work towards changing the attitudes of all concerned, the education of the handicapped in the mainstream will not succeed. We must assure that appropriate amounts of research and monies are made available if this dream is to become a reality. All who are involved in providing mainstream education to exceptional children and youth must have a complete understanding of their new roles.

Another major problem with the implementation of this law has to do with inadequate funding. As each of you know, PL 94-142 was written to help LEA's pay for the special education and related services mandated by this most important piece of legislation. The Congress established a payment formula based upon a gradually escalating percentage of the National average expenditure per public school child times the number of handicapped children being served in the school districts of each State in the Nation. That percentage was to escalate on a yearly basis until 1982 when it was to become a permanent 40 percent for that year and all subsequent years.

As each of you are aware, Congress has not appropriated the monies that were estimated at the time this legislation was passed in Congress. Failure by the Congress to appropriate adequate monies for the implementation and maintenance of this law and its mandates will most certainly curtail and perhaps eliminate some services or programs altogether. I must point out that LEA's are often tied to local tax receipts which generally do not increase over 2%, and certainly do not respond to inflation. I realize that the formula set forth in PL 94-142 does not guarantee actual appropriations, but I urge you as members of this sub-committee to recommend that Congress increase the funding level to at least the level mentioned in the current formula. If the efforts of all those who have worked so hard to implement this legislation and to guarantee that all handicapped children do receive a free and appropriate education are not to be in vain, the appropriations must be increased by FY-82.

Mr. SIMON. All four of you touched on the funding problem. I happen to also serve on the Budget Committee and I have been fighting for more adequate funds in this area. I believe that one of the tests of government is not only how we respond to the rich and powerful, but to those who really need help in our society.

One of the responses from my colleagues on the Budget Committee, a regular response, is if we increase the funding, in fact, we are not going to be helping the handicapped students that much. We are just going to be providing more money for the local school districts so they can have lower property taxes or have new band uniforms or whatever the local project is.

I would be interested, Dr. Werner, in how you would respond to my colleagues on the Budget Committee.

Dr. WERNER. I guess there are two issues involved in the flow of funds. No. 1, the basic decision that is made at the Department of Education level, when the distribution is made to the local school districts. The law says at least 75 percent of the dollars must flow into the local school districts on an entitlement basis. Missouri, as Charles has pointed out, flows, at least, 88, sometimes 89 percent of those dollars into the local school districts so they flow directly to the special education programs. The remaining dollars are used by the State of Missouri for discretionary, exemplary program grants on a competitive basis. So the first question is whether the dollars are getting down to the local district coffers so that they can even be actually spent for those youngsters. At least, in the State of Missouri, I believe the answer is yes, we are making the sincerest attempt that we can to place those dollars into the local school districts for children.

The second question is whether they will indeed be spent for handicapped students. That, I believe, is an administrative and management control problem. We in Missouri don't believe we have a problem of oversight in monitoring and requiring of the local district. The manner in which the local districts submit their budgets to us and the manner in which we require, for instance, the issue of not supplanting these moneys and using these moneys for other activities, as you mentioned, the football team or the debate team or for regular education, does not occur, to my understanding, in the State. We identify each dollar as it flows into the district on an activity budget and we feel assured that the issue of using these moneys to supplant the local district's effort in any other arena, other than special education, does not occur.

Mr. SIMON. Dr. Waier, do you care to respond?

Dr. WAIER. Very briefly. I think the economic condition of the country currently has slowed our revenue. The North Kansas City School District has had in place for many, many years a handicapped program, which means that total funding of our program, 100 percent of it, has to come from that perspective. The mandates of law require that we maintain a strong level of funding for the handicapped and the dollar is a single revenue resource with the exception of what is provided to us after the fact of the law. And I tried to bring that out in my testimony. I feel that in the contraction of our budget we continue to flow funds to the handicapped program and at the same time contract funds for the nonhandicapped program. In the long view of that, over 2 or 3 years, it can't help but hurt the regular programs in the district.

Ms. MILLER. If I were responding to the Budget Committee members, as you have indicated, I would say that Public Law 94-142 has the mechanics in place whereby local education agencies submit a plan to State agency and the State education agency submits to the Federal Government. If that is followed and the funds are appropriated there are ways to monitor. Where those States are providing full faith and making a sincere effort to serve handicapped kids, I don't believe the money is being misspent. I think it is the responsibility of those funding agencies to follow the process that has been established to monitor. If, in fact, the money is not being spent for handicapped students it can be withheld.

Mr. SIMON. Let me be more specific.

In your school district, if the Federal funding would increase 10 percent, would that mean that you would have an improvement in your program for the handicapped?

Ms. MILLER. We still need programs directly related and sent on down to handicapped students. We have done, I think, a fantastic job in improving, but that's not to say we have arrived and I tend to think there is a small percent of the school districts in Missouri that would say they have the perfect program.

Mr. SIMON. Mr. Cummings.

Mr. CUMMINGS. I would respond, that as you reach larger districts, I think, you find they are reaching, at least, full services and programing. They have programs in place or they are getting close, but again, the support services, the nondirect services, such as the comprehensive system of personnel development mandated by the law, those things are important if we have more than just a program in place, because of a concept such as mainstreaming, where you have to deal with awareness of not only the professional staff and the children, but the lay community, et cetera. So it is an indirect cost, I think, without increased funding. No one is going to be able to do it and yet, if it isn't done, I think it will kind of place a death blow on the whole legislation.

Mr. SIMON. Dr. Werner, one of the complaints we get, as we move around the country, is the States are not providing enough flexibility for local use of funds.

Is that the case in Missouri? Maybe I should ask the other three that question rather than you. Is this an area that should be of concern to the Federal Government?

Dr. WERNER. I believe that one of the responsibilities of the State education agency, as stipulated within the law, is the monitoring and governance of the special education programs within the State. That is required by the legislation. That is also required by the State constitutions.

In order to be assured that the funds are reaching the students and in order to assure your colleagues on the Budget Committee and on other appropriation committees that, indeed, the dollars that they have appropriated are doing the jobs intended, I think there has been rather strong and straightforward, but reasonable, control at the State level.

In developing our fiscal administrative procedures we are in contact with local school superintendents. We are in contact with the local directors of special education. We maintain a direct liaison with the

Federal office and regional office relative to overriding audit requirements, fiscal management accountability requirements that every Federal program must make. There are instances across the State, on a district-by-district basis, where we do have a difference of opinion of how the money should be finally accounted for and managed, within all of the 554 units across the State of Missouri.

In general I think that we have not had a significant concern on the part of our school administration friends, either superintendents or directors of special education, about the manner in which we administer and require the administration of these dollars. Again, the assurance that we want to come forth to the Congress with is that, indeed, the dollars are being spent for handicapped students, to benefit those students.

One of the major problems is the problem that Dr. Waier brought up relative to those districts that had already made a commitment before 142 funds were made available. They are, indeed, spending their local dollars and their State dollars to continue special programs, because that is, indeed, a requirement of the district and the Federal funds can only be used to supplement previous efforts, not supplant or take the place of.

There is an issue involved in one of the sections of the statute which allows the State, as a whole, to supplant the Federal dollars when we have reached full service. Missouri is not at full services as yet, but we are approaching that point. It is a very difficult question of when, in fact, for the State board should go to the U.S. Department of Education and ask for the supplant waiver to occur. We are not there yet. We have districts such as North Kansas City and other major school districts in the State that have tremendous dollars from local and State revenues in place already, historically in place. Their Federal dollars are curtailed, to an extent, and local dollars are curtailed, to an extent, because they did take the initiative, but at the same time we have other school districts in the State that need to continue to flow those dollars in and continue to upgrade their local and State expenditure program.

Mr. Simon. If I may ask the other three of you, is there a reasonably good relationship that way, between State and local, in terms of flexibility?

Dr. Waier. Well, we are a school district on which there is a difference of opinion as to how those dollars ought to be applied and the focus of the State, and I think correctly so, has been in the area of staffing, to bring up to speed staffing across the State. We would like to focus on the materials and equipment that would deliver the programs that we are already staffed to deliver, but don't have the array of materials that we would like to have to do it. With the emphasis on staffing, that causes a holding back of the flow of those dollars to us and that is where we disagree with one another. We think we ought to be allowed to apply those dollars in the way that we want to.

Ms. Miller. We are one of the districts that does not have a background of having full service programs for handicapped students. It has been a dramatic increase and has wide implications, lots of people have been involved and it is some of the related services in those areas that we just want to add a little bit more.

Most school districts, a great many school districts, spend the major portion of their entitlement moneys for staff and that is in those school districts where they have not had ongoing programs. With the implementation of Public Law 94–142 they have made a serious effort to comply.

Mr. CUMMINGS. We were the first district west of the Mississippi to have special education, so we have a long tradition. We really have not had that many problems. We have added staff, considerable staff, and that does take a large percentage of the moneys.

Mr. SIMON. Dr. Waier, one final question. It is not directly related to Public Law 94–142, but regarding section 504 of the Rehabilitation Act of 1973.

We have heard, as we hold oversight hearings around the country, many complaints relating to interpretation of section 504. These complaints center around local architects who come in with grandiose plans of how to comply—such as a $10,000 change rather than a $300 wooden ramp. Is this a major problem for you?

Dr. WAIER. It could have been, but it was not. We are a school district with a very significant maintenance staff and we have been able to construct and do much of this work ourselves. If we were required instantly to modify all buildings we would have a problem. What we have is a spectrum of buildings that allows us to designate throughout the school district enough buildings to sufficiently serve the needs of the handicapped, so we have done much of it in-house. Because of the different kinds of architecture throughout the school district, we have been able to accommodate 504.

Mr. SIMON. Mr. Coleman.

Mr. COLEMAN. Thank you, Mr. Chairman.

Dr. Waier raised the issue of teacher burnout, especially among those teachers involved in educating the learning-disabled student. I wonder if you would briefly address the following: Does that phenomenon occur in your school districts, and how are you addressing it if it does?

Dr. WAIER. Two problems.

I think one of the critical problems of the teacher would be the behavioral disordered, the real problem youngsters. We find difficulty in acquiring teachers—we were five short at the beginning of this school year—and keeping them in those kinds of classrooms because of the problems.

The second problem is, I think, the pressure that the normal classroom teacher has with what is the mainstreaming concept and the fact that she is sometimes sent four or five youngsters, that she feels ill equipped to deal with. We have responded by providing additional time for teachers during the year to help in their planning, parental meetings and to work with the special teachers, but they very definitely feel the pressure of mainstreaming.

Part of our consolidation, I think, is another way we were able to reduce that somewhat. There was a time when, if you had five LD youngsters in the building that were mainstreamed and you only had one third grade classroom, that was the only place for them to go. We are bringing our school district together and contracting. Because of the decline, we are able to provide enough sections now so we can spread that more evenly. We have done that, in that instance, and in the other instance we have provided more time for teachers. But when you provide time for teachers you take them away from their classrooms. Your kids are commuters today and so are your teachers, in that respect, and time is directly related to the performance of youngsters in the classroom. Every time you take them out, even though we hear about all of these inservice programs, in a way you diminish their interaction with the youngsters and the product of that is lower performance and less learning.

Ms. **Miller**. I would like to speak to the subject, because I don't think it is just special education people that are burning out. I think it is throughout education, for a lot of reasons that society brings to bear.

In Park Hill District we have a committee of central office administrators, principals, regular teachers and special teachers who are, just this year, this semester, drawing up plans to do workshops and inservice to determine which are the best ways to go to address the burnout issue. I don't think it is one that we can depend on the Federal Government or the State government to do something about. We need to help our own teachers and we are attempting to address that, but it is common throughout, including special education. It is a real concern throughout all education.

Mr. **Cummings**. I would agree. I think it has to be done internally. It is not something that could be mandated, but certainly we must be aware of the problem. As Dr. Waier indicated, the area of behavioral disordered or the severely handicapped is really, the burnout rate, if you will, is very heavy there. I think it needs to be done internally.

Mr. **Simon**. Tom, if you would yield—I have already asked the question of the North Kansas City District.

As a matter of policy, do you inform the regular teacher when a child is mainstreamed?

[Panel nodded in agreement.]

Mr. **Simon**. I'll give it back to you, Tom.

Mr. **Coleman**. Ms. Miller, you mentioned in your testimony that financial restraints restrict preservice and inservice teacher training. I wonder if you could give me some specifies, as to what you are doing without because of this lack of finances?

Ms. **Miller**. A certain portion of our entitlement money is given to comprehensive system and personnel development, which is inservice. We do, depending, second, moneys—first priority is given to students—hiring staff, getting absolutely necessary materials and equipment. Anything that is left over, a portion of that money can be used for inservice training.

We are fortunate, in this part of Missouri, to have significant resources available for inservice training. In our negotiations with teachers we set up times when we can provide inservice training, conferences, workshops, et cetera.

Mr. **Coleman**. Mr. Chairman, if I might ask one more question, before Mr. Erdahl.

On another subcommittee that I work on, we see a lot of youngsters (juveniles) who have contact with the law in a very negative sense, and who also have learning disabilities.

What, if anything, is the State of Missouri or your respective school district doing to try to limit the involvement of students with learning disabilities with the law? Do you emphasize, in your programs, that learning disabilities can translate into future, perhaps criminal activities, if not found, simply because of low self-esteem and other attitudes that go with it?

Are you anticipating any programs to deal with learning-disabled students involved with the law? What, if anything, could we do in the Congress to assist your programs?

Dr. Waier, I'll start with you.

Dr. **Waier.** I'm not sure I know how to respond. The program that I had, not in this school district, but in another school district was considered a model, at the time. It was called a police liaison program and we did have some funding that was part of a cooperative effort between the local municipality and the school district and resulted in having a police officer, trained specifically in working with youth, in the school at all times. That person worked as a counselor. He worked just generally in terms of visibility, working with the family and this seemed to have an extremely positive effect, just in that particular school district.

I am not sure that I agree or could agree that LD results in problems with the law in the end, any more than it does with any other youngster. I guess I would have a hard time accepting that.

Dr. **Werner.** Let me make two statements.

No. 1, the first item is, in fact, the current historical perspective of education and the juvenile, adjudicated youth. We have found in the last 3 or 4 years, as we have monitored the major metropolitan areas of Missouri, that there has been an attitude that every student that is assigned to a detention facility, by the juvenile court system, was a handicapped student. We have found special education dollars serving those kids. That can't be true. Not every youngster who has either committed an offense against the juvenile code, against the felony code, can be a handicapped student. So we have worked with school districts to, indeed, clarify that particular point. That any youngster who is going to be receiving a special education service must be identified as a handicapped student. So there are estimates between 20 to 40 percent of the youngsters in those detention faciltites who are, indeed, handicapped. That might be true. I would suspect there would be a higher incidence of special education problems in that population.

The second item is an interesting item, because it is something that the law intends to occur and it is of interest to our State Governor and to our State Department of Education and other agencies, and that is interagency cooperation.

We find that many of these youngsters, the serious juvenile offender—handicapped student, is a youngster that needs multiple types of services. He needs services that are educational in nature, he needs social services and he needs mental health services, which call for, at least, three or four agencies to participate in a total treatment program. We need the educational community to come in and start working with this child, to deal with his attitude, to deal with his self-concept and deal with his basic skill development. We need the mental health community to deal with this child's internal perspective of himself and how he is to relate with authority figures in society and peer relationships. We need social services to deal with this child's family, because in many instances the family is a family that needs significant types of social agency help.

We have just had a 142-panel meeting where we presented a pilot project that was recommended for implementation here in Jackson County, where we will be working with the court system, the mental health system, the education system, and social services system to identify how we can best fit, on a limited basis, just a trial basis, the problems and the postive actions that occur when agencies work together to try to design a student program. We are going to implement that program this coming month, in October, and we hope to have some results in January or February which, then, from that point, can be shared statewide with other urban and rural municipalities, to deal on a cooperative basis with a problem of interagency cooperation.

The State of Missouri, Department of Mental Health and the Department of Education has just, within the last 3 weeks, signed a cooperative agreement where the agency directors have agreed that they will cooperate.

That, as you in the legislative process can understand, is a significant event, but more significant is how that translates down to our local school district friends to cause this cooperation to actually occur.

Ms. MILLER. I think the research would support your statement that there are a number of LD students who become juvenile offenders, maybe for several reasons, but one of which has to be the fact that when we got into learning disabilities, in the middle or later 1970's, we generally were addressing elementary age students. The diagnostic materials, the teaching materials, things that were developed were for elementary school students and secondary students were kind of pushed on down the line. Those students, who were not identified and diagnosed early had picked up poor habits, their emotional problems had begun to develop and hence it was more difficult to turn around their learning problems.

I think there are some other reasons why that happened. In the Park Hill School District the one thing that we have done is to establish an alternative school. The students leave the traditional high school program in May, after having been properly identified as having psychological problems, et cetera, and may choose to attend the alternative school. It addresses itself to secondary age youngsters and has been beneficial.

Mr. COLEMAN. Could you describe that further? Is that for all high school years?

Ms. MILLER. We generally serve juniors and seniors in high school, although sophomores are not excluded. There have been a few instances where they have attended.

It is located on the campus of Park College, because we have to rent space, since we don't have the space in the district for these students.

They contract for the number of units of credit. It is not a traditional program. It's not meant to be the structured kind of regular schoolday and those students meet the obligations or the requirements for high school graduation.

Or, in some cases, their IEP may say the goal is to return them to the regular high school program. It is a Public Law 94–142 funded project and students are identified as handicapped and do have an IEP in place.

Mr. COLEMAN. Thank you.

Mr. CUMMINGS. I think one thing that can be done, and for the least few years it has been successful, is to meet rather frequently with all agencies involved with serving youth. In this case we began serving handicapped youth and I think we have about 20 to 25 agencies in the community that meet monthly on some of the problems with the juvenile offender, if, in fact, that child is handicapped and this has opened the lines of communication. It's kind of our own interagency agreement locally.

Mr. SIMON. Is there anyone here who would like to have sign language provided?

[No response.]

Mr. SIMON. Not yet. Thank you.

Mr. Erdahl?

Mr. ERDAHL. Thank you, Mr. Chairman. Also I want to thank each member of the panel for their contribution to our hearing here this morning. You have already talked a bit, Mr. Chairman, about the problems we face in the Congress on funding and picking the priorities.

Someone brought up, you and Mr. Coleman, also, the need for flexibility and coordination. Maybe the law should be amended to provide for more latitude on the local level.

A couple of questions come to mind that I would like to touch on that the last discussion brought to mind, as you talked about difficulties people get into with the law and in other situations, such as the classroom and family.

What are you doing about preschool testing? Have you tried to catch some of these things before the kids ever enter the school? You are nodding. Do you care to respond to that?

Ms. MILLER. We do preschool testing in Missouri. You know, however, we have a law that is permissive for preschool service. We do not provide service. We do provide the evaluation. We act as a referral for the family to seek out resources and help they might utilize until such time as the child reaches school age.

Mr. ERDAHL. Thank you. I think each member has talked a bit about requirements in the law for the least restrictive environment, of mainstreaming, the best environment, the most stimulating.

It seems to me and maybe I have misinterpreted it, that for some individuals, perhaps the least restrictive environment would be in the regular classroom. For others it certainly would not be.

Does not the law provide that possibility that for this individual the least restrictive environment is not the regular classroom, which might be extremely difficult for this young boy or girl, but could well be in the special class?

Again, if any of you wish to respond or all of you——

Ms. MILLER. We agree with that interpretation of the law.

Mr. ERDAHL. Is that part of your problem, sir, with the courts, that some individuals or families claim that my son or my daughter is properly in the class with the rest of the kids and the law backs me up on it?

Mr. Waier. That is what gives rise to conflict. The judgment of the school people might be, just for the sake of simplifying this, that 20 percent of the time the youngster ought to be mainstreamed and 80 percent of the time ought to be receiving special education in a special classroom for that purpose.

The parent will say, "It's my contention the youngster ought to have 60 percent of his time in the regular classroom and only 40 percent of his time in the special education."

That is something we often negotiate to both the satisfaction of the parent and to the school people often we are unable to. The insistence that the youngster receive 80, 90, or 100 percent of the services in the regular classroom causes us distress.

Mr. Erdahl. Thank you very much.

Mr. Chairman, another question comes from that then. Do you see a need to amend the current law? As I understand it, this is really interpretation of the law, because I have to assume that as a school superintendent or as administrators, you properly need that flexibility. Hopefully with the testing as we saw in your schools, there will be experts that are available to evaluate, on an individual basis, each child.

Maybe we always have to have that out, so to speak, of possible litigation in the courts. Hopefully that would be at an absolute minimum. It seems to me the law—maybe it doesn't, but my understanding is that it does provide at least that latitude for you to say that, "This youngster should be 60 percent of the time in the classroom but 40 percent of the time, for his sake and that of the other children, in another environment."

Mr. Waier. Not without the total agreement of the parent. As the law exists right now, that is the requirement.

Mr. Erdahl. Do you think the agreement of the parent or the acquiescence of the parent should be eliminated from the law?

Mr. Waier. No, sir, I do not.

Mr. Erdahl. I am not trying to bait you, sir.

Mr. Waier. I understand. I think the appeal procedure ought to be expedited. I think it's too long and I think while you are in that appeals procedure the youngster is not receiving the kind of service the youngster ought to receive. I worry about that.

No. 2. I worry about the intervention of HEW and OCR. I think I mentioned that earlier. The same problem exists here with these people launching a total investigation of what is occurring with a presumption of guilt on the part of the school officials.

That takes us out of where we want to be in terms of the conflict resolution. We are being buffered on the one side by OCR, where we are trying to deal with the parent and sometimes if given the week or the 2 weeks or the opportunity to sit down, we can bring that thing to a resolution.

Once they have identified with OCR, OCR then becomes their champions. We have found an inability to communicate, I think, at the level we want to communicate with OCR.

Mr. Erdahl. Mr. Werner, you would like to respond?

Mr. Werner. Yes, I would like to address that issue. There is no doubt in my mind that many of the school personnel and parents of handicapped students have interpreted—misinterpreted, the provision of this term called the least restrictive environment.

I think the law indicates that the student should be successful in whatever program he is going to be placed. In many instances we find wholesale mainstreaming, which is an inappropriate word, but we find wholesale placement of students into regular classrooms where students do not receive or make the types of educational progress they should be making.

It's, I guess, a social and psychological phenomenon that we have to continue to deal with. That is the phenomenon of, "I want my child", and, "We want as many of the students as we can in our school district to appear as normal as possible", either to the general public or to peers or to family.

I think that's one of the major issues we are continuing to work with as this program evolves. The issues of due process that Dr. Waier brings up are issues of an individual nature. The law guarantees that right to due process and to ask the question of the district, "Are you certain this is the correct placement?"

It has been a problem in the State of Missouri. I would reiterate that the Office for Civil Rights' monitoring and process of investigation of complaints from any source, on the one hand, and the social district's legitimate attempt to negotiate and accommodate, on the other hand, have caused significant problems in certain instances.

There are some school districts who appear to need a separate staff to handle all the OCR complaints that fall into their office and anyone can complain about anything or everything they want to and OCR will send someone in to investigate. It might be the same complaint three or four times about the same situation.

Mr. SIMON. If my colleague would yield?

Mr. ERDAHL. Of course, Mr. Chairman.

Mr. SIMON. When you talk about expediting the appeals process are you talking about statutorily setting some deadlines?

Mr. WAIER. Yes, and I think bringing it to its fruition with all kinds of speed. I think by the time we meet at the first level and then we go through the process of finding the three-committee panel and going through the testimony and witnesses of that panel, sometimes it can take 3 or 4 days, because it becomes very much not an informal hearing but very much an adversary, more than quasi-legal hearing.

Beyond that point, it goes to the Board of Education. The law is fuzzy with regard to whether the Board can really make the decision or have hearing officers or how the disposition of that will go.

From that point it goes to the State Board of Education or to the Commissioner of Education and from that point it goes to the courts.

In at least one of our cases the courts had it and sent it back through the appeal mechanism. A little while later, OCR was up to their hips in the same case and we were trying to work the appeal mechanism on the other side.

All of this meant, for us, almost 3 years. The parent finally withdrew the youngster from school and I am not sure that was the response that should have happened, but it did. Our school district took a great deal of battering in the media throughout. There ought to be some better and quicker ways to resolve that. There was not.

Mr. Simon. I would be interested in receiving from you some very specific suggestions on what changes you are proposing regarding the due process provision.

Mr. Werner. I would like to comment, if I may, on that item. When we passed our State legislation, contained within that statute was a due process procedure which was to be placed into effect by the local board of education when difficulties arose on placement or an evaluation decision.

The Bureau of Education for the Handicapped, at that time, which is now the Office of Special Education, found great difficulty with that item, because we had allowed local boards to act as hearing officers. That had been found in a court in the northeast as a partiality issue.

We have revised in 1979, by our General Assembly, the due process procedure which establishes discreet limits of time placed on both parties to arbitrate the question in a quasi-judicial procedure. The only extension of limits on time that can be afforded to the parties is at the mutual agreement of both parties.

We are meeting the timeclock as established by the legislation now. There still might be concern about that procedure on the part of some school administrators, but we have definitely—at least here in the State of Missouri—shortened that timeclock to a significant lower limit.

Mr. Erdahl. Thank you, Mr. Chairman. I have no further questions.

Mr. Simon. We thank the panel very much.

Our next panel is Elaine Wright, the assistant principal of Antioch Middle School; Bill Tarpley, the principal of Central High School; Tom Kincaid, a learning disabilities teacher at Oak Park High School, and Jo Norris, director of special services at Platte County R-III Schools.

PANEL: ELAINE WRIGHT, ASSISTANT PRINCIPAL, ANTIOCH MIDDLE SCHOOL; BILL TARPLEY, PRINCIPAL, CENTRAL HIGH SCHOOL;; THOMAS E. KINCAID, LEARNING DISABILITIES TEACHER, OAK PARK HIGH SCHOOL; AND JO B. NORRIS, DIRECTOR OF SPECIAL SERVICES, PLATTE COUNTY R-III SCHOOL DISTRICT

Mr. Simon. Again, I need to remind the witnesses that we do face some time problems today. To the extent you can condense your oral testimony, it will be helpful.

Elaine Wright?

STATEMENT OF ELAINE WRIGHT, ASSISTANT PRINCIPAL, ANTIOCH MIDDLE SCHOOL

Ms. Wright. Members of the committee, as one deeply interested in all aspects of education and particularly education of the handicapped, I appreciate the opportunity to testify before you.

I have taught 8 years in special programs. I am now assistant principal of Antioch Middle School in the North Kansas City School District.

Among my present duties is administrative responsibility for the six special programs housed in our building. These programs include the gifted and academically talented, hearing impaired, educably mentally retarded, behaviorally disturbed, speech impaired, and learning disabled.

In this program, our building is fortunate enough to have one special learning disabilities teacher to serve each of the three grade levels. These teachers work in a regular basic skills class and exploratory classes in which the students are enrolled.

They may work with individual students in the resource room when this is warranted. The special learning disabilities teachers work with the regular teacher to aid in modifying and individualizing the curriculum for these children.

This gives them an unequaled opportunity to observe their students in a regular environment and to assess the methods the regular teachers employ. They can then make suggestions for any different techniques needed.

We are pleased to be able to offer this level of service to our students. I feel a sincere gratitude that our legislators have recognized the needs of handicapped students. I am aware that much study, concern, and preparation went into the development of Public Law 94-142. You show your continuing interest by holding this hearing to learn how Public Law 94-142 has affected the education of our children.

The concept of free and compulsory education for all who can be educated is only a little over 100 years old. Putting that concept to work has taken much longer.

Through the years, group after group of children—black, Mexican-Americans, American Indians, children of immigrants—were failed by the American educational system. Of all the groups of childern failed by our system, none has been more discriminated against than the handicapped.

We are most fortunate in North Kansas City to have already had what we felt was a broad and very effective program for the handicapped prior to the passage of Public Law 94-142.

Through additional funding now it is possible, because of the law, to have an even better program. North Kansas City's program reaches every type of exceptionality. All students are served directly by this district except the severely handicapped where the direct responsibility is that of the State. The cost of their education, however, is borne by the district.

North Kansas City's program for the handicapped was implemented 17 years before Missouri's House Bill 474 was established as a statewide plan for education of the handicapped, and 21 years before Public Law 94-142.

As in the implementation of any new or expanding program, we have experienced certain areas of concern working with Public Law 94-142. It is these areas of concern I wish to address.

In my earliest experience as a special educator, trying to implement Public Law 94-142, I met with many frustrations. There was not sufficient time in the workday to teach, test, write IEPs, make conference appointments, and have conference times convenient for parents, administrative representatives, and other teachers involved.

I spent long days, weekends, and every spare moment trying to fill the above-mentioned obligations. I met with opposition from some parents. I felt the students were being neglected. In following the letter of the law, the intent was not being fulfilled. There were teachers who resented their required role in the IEP writing and conferring. The special teachers and, I fear, the special students, bore the brunt of their resentment.

I loved my job and kept going, but I understood special educators who turned to other fields.

As our district recognized the problems of special areas we were facing, it worked to make adjustments. Our special teachers now have 2 days of relief time to aid them in writing or conferring. This does not resolve the problem totally, but it does help.

Most teachers in other areas have become resigned, if not enthused, about the role they play. Parents, for the most part, have come to accept the IEP conferences. However, all districts have not recognized the problem or have been able to make adjustments necessary to comply properly with the requirements of the law.

The Individual Education Plan or IEP is, in concept, highly desirable and long overdue. In theory, at least, it should benefit all students, the nonhandicapped as well as the handicapped.

However, the requirement does not take into account the enormous paperwork load and loss of instructional time involved. In my district, it is not unusual for a speech therapist, for example, to spend as long as 4 weeks of the school term developing IEPs and conferring with teachers and parents.

During this time, the students are without speech instruction. Testing is an important issue. To test a child thoroughly requires highly skilled personnel. I am sure you are aware this is the most fundamental phase or step in planning a child's program.

In North Kansas City we have highly trained learning specialists who conduct testing. All districts are not this fortunate, and that is a concern of mine.

When receiving students from other districts, the lack of uniformity in programs, criteria for admittance and IEPs becomes apparent. This is confusing to parents, often delays proper placement, and is frustrating to the special teacher who, again, must explain the situation to all involved persons, and then try to cope with the repercussions.

A further problem I would like to bring then to the committee's attention is the gross injustice to many children by the current tendency to label them.

We are in a race to tag and stamp far too many children, marking them for the rest of their school career, perhaps for life. The year prior to the implementation of Public Law 94-142, Missouri had 4,000 students diagnosed as learning disabled. Today there are over 28,000.

Learning disabilities exist, but learning disability has become the most socially acceptable disability one can have, and I fear many children now wear that label without justification.

Another concern which I would like to express to the subcommittee deals with inordinate costs of programs for the handicapped in relation to expenditures for the nonhandicapped; with the emphasis on the handicapped, and now the gifted, the only person with no one speaking for him is the forgotten average child.

I believe it is only a matter of time before we see a suit challenging the expenditures, and services for exceptional students which are denied to nonhandicapped.

Still another matter I would like to bring to the subcommittee's attention is that of mainstreaming. The abandonment of sound educational methodology proven through the years in the name of the supposedly more democratic school setting is harming children.

Special needs require special help, and often special classrooms. Although mainstreaming appears nowhere in the law, the general conception is that mainstreaming is required, and the administration of it has resulted in a placement of handicapped children in regular classrooms with regular classroom teachers ill-equipped to meet the child's special needs.

There is no magic in mainstreaming. Placing a child in a regular classroom solves nothing in and of itself. Sometimes it works. Often it does not. Scheduling handicapped students into classes in which they can achieve and not just fill a space is a problem. Frequently, mainstreaming means general music, physical education or classes where the child can just be present.

The socialization may be desirable but I submit to you this may be hours wasted. These students need extra time to work and learn, not wasted present time. In true mainstreaming, if it is to be available to handicapped students, class sizes must be manageable, the regular classroom teacher properly trained, and the entire process thought through carefully.

It should be safeguarded to assure it will not be detrimental to the child. Just placing a child's name on a class roster does not constitute mainstreaming. Mainstreaming itself is based on questionable assumptions. One, it is assumed the setting of the regular classroom is less isolating for the handicapped child. In point of fact, the regular classroom may be the most restrictive environment for some children.

Two, it is assumed that academically- and socially-handicapped children will benefit more from integration from regular students. In fact, the competitive learning environment needed for normal children may multiply the possibility of failure for the mainstreamed handicapped child.

There are also disturbing indications that nonhandicapped students in mainstreamed classes perform more poorly than their peers in nonmainstreamed classes.

Three, another assumption is that regular students in mainstreamed classes will come to understand and accept handicapped students in a more positive normal manner. With the exception of the mildly handicapped, most of the studies we have indicate this is not true.

Conceptually, mainstreaming is a defensible practice, but must depend on the student's ability to benefit. By itself, it will solve nothing.

The final concern I wish to present is what is happening to teachers. My awareness as an administrator is even greater than when I was a special teacher. I understand the feelings of one teacher, but I see the total picture more clearly.

Teacher burnout among special educators is brought on by unreasonable demands of the law, Federal agencies, advocates and some elements of the public which are becoming more and more prevalent.

When this phenomenon is mentioned, one initially thinks of a teacher involved. Please remember that while we should care about the teacher, of equal importance, are the effects upon students, their parents and other faculty members. The effects of burnout are far-reaching. I cannot overemphasize to you the importance of recognizing this.

Three articles in the September issue of Exceptional Children published by the Council for Exceptional Children deal with this problem. These articles are "Burnout Among Teachers of Exceptional Children"; "Public Law 94–142 and Stress, a Problem for Educators", and "Administrator's Role in Fostering the Mental Health of Special Service Personnel." I would recommend these articles to you.

In closing, I would like to offer the following suggestions. One, that a thorough examination of the requirement of the individual education plan be made with the view to streamlining procedures to minimize paperwork and loss of instructional time.

Two, that standards be set for the proper training of personnel involved in testing. Three, that investigation be made into the problems of overdiagnosis and improper placement of students. Four, that a more defensible standard for mainstreaming be clearly defined in the guidelines for Public Law 94–142 with a view to realistic placement rather than the indiscriminate placement now present in many schools.

Five, that a study be made of the effects of Public Law 94–142's requirements upon teachers. Definite recommendations should be forthcoming which will deal with the problems of teacher stress and burnout.

Thank you for your attention.

Mr. Simon. Thank you for your testimony.

[The prepared testimony of Elaine Wright follows:]

PREPARED TESTIMONY PRESENTED BY ELAINE WRIGHT, ASSISTANT PRINCIPAL, ANTIOCH MIDDLE SCHOOL, NORTH KANSAS CITY SCHOOL DISTRICT

Members of the Committee:

As one deeply interested in all aspects of education and particularly attuned to education of the handicapped, I appreciate the opportunity to testify before you. I have taught eight years in special programs. I am now assistant principal at Antioch Middle School in the North Kansas City School District. Among my present duties is the administrative responsibility for the six special programs housed in our building. These programs include the gifted and academically talented, hearing impaired, educable mentally retarded, behaviorally disturbed, speech impaired and learning disabled. In this program our building is fortunate to have one special learning disabilities teacher to serve each of the three grade levels. These teachers work in the regular basic skills classes and exploratory classes in which their students are enrolled. They may work with individual students in the resource room when this is warranted. The special learning disabilities teachers work with the regular teacher to aid in modifying and individualizing the curriculum taught. This gives them an unequaled opportunity to observe their students in the "regular" environment and to assess the methods the regular teacher is employing. They can then make suggestions for any different techniques needed. We are pleased to be able to offer this level of service to our students.

I feel a sincere gratitude that our legislators have recognized the needs of handicapped students. I am aware that much concern, study and preparation went into the development of 94-142. You show your continuing interest by holding this hearing to learn how 94-142 has affected the education of our children.

The concept of free and compulsory education for all who can be educated is only a little over one hundred years old. Putting that concept to work has taken much longer. Through the years group after group of children - blacks, Mexican-Americans, American Indians, children of immigrants - were failed by the American educational system. Of all the groups of children failed by our system, none have been more discriminated against than the handicapped.

We were most fortunate in North Kansas City to have already had what we felt was a broad and very effective program for the handicapped prior to the passage of 94-142. Through additional funding now possible because of the law, we have an even better program. North Kansas City's program reaches every type of exceptionality. All students are served directly by the district except the severely handicapped who are the direct responsibility of the state. The cost of their education, however, is borne by the district. North Kansas City's program for the handicapped was implemented seventeen years before Missouri's H.B. 474 established a mandatory statewide plan for the education of the handicapped and twenty-one years before the enactment of P.L. 94-142.

As in the implementation of any new or expanding program, we have experienced certain concerns in working with P.L. 94-142. It is these areas of concern I wish to address.

In my earliest experience as a special educator trying to implement 94-142, I met with many frustrations. There was not sufficient time in the work day to teach, test, write I.E.P.'s, make conference appointments, and have conferences at times convenient for parents, administrative representatives and other teachers involved. I spent long days, weekends and every spare moment trying to fulfill the above mentioned obligations. I met with opposition from some parents. I felt the students were being neglected. In following the letter of the law the intent was not being fulfilled. There were teachers who resented their required role in the I.E.P. writing and conferring. The special teachers and, I fear, the special students bore the brunt of their resentment. I loved my job and kept going but I understood special educators who turned to other fields.

As our district recognized the problems the special areas were facing, it worked to make adjustments. Our special teachers now have two days of released time to aid them in writing or conferring. This does not resolve the problem totally, but it does help. Most teachers in other areas have become resigned if not enthused about the role they play. Parents, for the most part, have come to expect the I.E.P. conferences. However, not all districts have recognized the problems or have been able to make adjustments necessary to comply properly with the requirements of the law.

The Individual Education Plan or I.E.P. is, in concept, highly desirable and long overdue. In theory at least, it should benefit all students, the nonhandicapped as well as the handicapped. However, the requirement does not take into account the enormous paperwork load and the loss of instructional time involved. In my district it is not unusual for a speech therapist, for example, to spend as long as four weeks of the school term developing I.E.P.'s and conferencing with teachers and parents. During this time the students are without speech instruction.

Testing is an important issue. To test a child thoroughly requires highly skilled personnel. I'm sure you are aware that this is the most fundamental step in planning the child's program. In North Kansas City we have highly trained learning specialists who conduct testing. All districts are not that fortunate and that is a concern of mine.

When receiving students from other districts, the lack of uniformity in programs, criteria for admittance and I.E.P.'s becomes apparent. This is confusing to parents, often delays proper placement and is frustrating to the special teacher who again must explain the situation to all involved persons and then try to cope with the repercussions.

A further problem which I would like to bring to the committee's attention is the gross injustice to many children by the current tendancy to label them. We are in a race to tag and stamp far too many children, marking them for the rest of their school careers - perhaps for life. The year prior to the implementation of P.L. 94-142 Missouri had 4,000 students diagnosed as learning disabled. Today there are over 28,000. Learning disabilities exist, but L.D. has become the most socially acceptable disability one can have and I fear many children now wear that label without justification.

Another concern which I would like to express to the committee deals with the inordinate cost of programs for the handicapped in relation to expenditures for the nonhandicapped. With the emphasis on the handicapped and now the gifted, the only person with no one speaking for him is the forgotten average child. I believe it is only a matter of time before we see a suit challenging expenditures and services for exceptional students which are denied to the nonhandicapped.

Still another matter I would like to bring to the committee is that of mainstreaming. The abandonment of sound educational methodology, proven through the years, in the name of a supposedly more democratic school setting is harming children. Special needs require special help and often special classrooms. Although "mainstreaming" appears nowhere in the law, the general conception is that mainstreaming is required and the administration of it has resulted in the placement of handicapped children in regular classrooms with regular classroom teachers ill-equipped to meet the child's special needs. There is no magic in mainstreaming. Placing a child in a regular classroom solves nothing in and of itself. Sometimes it works. Often it does not. Scheduling handicapped students into classes in which they can achieve and not just fill a space is a problem. Frequently mainstreaming means general music, physical education or classes where the child can just be present. The socialization may be desirable but I submit to you this may be hours wasted. These students need extra time to work and learn, not waste of present time. If true mainstreaming is to be available for handicapped students, class sizes must be manageable, the regular classroom teacher properly trained, and the entire process thought through carefully. It should be safeguarded to assure it will not be detrimental to the child. Just placing a child's name on a class roster does not constitute mainstreaming.

Mainstreaming itself is based upon questionable assumptions:

1. It is assumed that the setting of the regular classroom is less isolating for the handicapped child. In point of fact the regular classroom may be the most restrictive environment for some children.

2. It is assumed that academically and socially handicapped children will benefit more from integration with regular students. In fact, the competitive learning environment needed for normal children may multiply the possibility of failure for the mainstreamed handicapped child. There are also disturbing indications that nonhandicapped students in mainstreamed classes perform more poorly than their peers in non-mainstreamed classes.
3. Another assumption is that regular students in mainstreamed classes will come to understand and accept handicapped students in a more positive, normal manner. With the exception of the mildly handicapped, most of the studies we have indicate this is not true.

Conceptually, mainstreaming is a defensible practice, but must depend upon the student's ability to benefit. By itself it will solve nothing.

The final concern I wish to present deals with what is happening to teachers. My awareness as an administrator is even greater than when I was a special teacher. I understand the feelings of one teacher, but I see the total picture much more clearly. Teacher burnout among special educators brought on by unreasonable demands of the law, federal agencies, advocates and some elements of the public, is becoming more and more prevalent. When this phenomenon is mentioned, one initially thinks of the teacher involved. Please remember that while we should care about the teacher, of equal importance are the effects upon students, their parents and other faculty members. The effects of burnout are far reaching. I cannot over emphasize to you the importance of recognizing this. Three articles in the September issue of Exceptional Children published by the Council for Exceptional Children deal with this problem. These articles are "Burnout Among Teachers of Exceptional Children," "Public Law 94-142 and Stress a Problem for Educators," and "Administrator's Role in Fostering the Mental Health of Special Service Personnel." I would recommend these articles to you.

In closing I would like to offer the following suggestions:

1. That a thorough examination of the requirement of the Individual Educational Plan be made with a view to streamlining procedures to minimize paper work and loss of instructional time.
2. That standards be set for the proper training of personnel involved in testing.
3. That an investigation be made into the problems of over diagnosis and improper placement of students.
4. That a more defensible standard for mainstreaming be clearly defined in the guidelines for 94-142 with a view to realistic placement rather than the indiscriminate placement now prevalent in many schools.
5. That a study be made of the effects of P.L. 94-142 requirements upon teachers. Definite recommendations should be forthcoming which will deal with the problem of teacher stress and burnout.

Thank you for your attention.

Elaine Wright
North Kansas City School District
September 22, 1980

Mr. SIMON. Bill Tarpley, principal of Central High School.

Mr. TARPLEY. Thank you.

STATEMENT OF BILL TARPLEY, PRINCIPAL, CENTRAL HIGH SCHOOL

Mr. TARPLEY. I would suggest to the subcommittee that I fully believe the attitude taken by the administrator of a particular building certainly reflects on the staff of that building and if, in fact, the administration of a particular building has a positive view of Public Law 94–142 and intends to implement that law to its fullest, and if the staff of that building recognizes his or her attitude, it certainly makes for a more compatible situation for everyone.

Central High School has an enrollment of approximately 2,000 students in grades 9 through 12. It is one of three high schools in the St. Joseph area. The student body is representative of a broad cross section of the various socioeconomic levels.

The staff is made up of 121 variously certified teaching personnel. Central High School has handicapped students who are learning disabled, mentally handicapped, behavior disordered, orthopedically handicapped, health impaired, partially sighted, hearing impaired, and speech impaired.

In the last 3 years, as prescribed by Public Law 94–142, the administration of Central has made a serious effort to develop an awareness program for the entire staff. These programs have been supported partly by local effort and partially through Public Law 94–142 entitlement funds.

As principal of Central High School, I have been asked to present the various programs recently introduced to the staff and students in regard to the handicapped.

In 1978, in conjunction with the department of special services, miniworkshops were developed for all professional staff. These workshops were presented on the department level. We thought by doing it that way, we would deal with fewer people at a time and they could feel more comfortable in asking questions and getting problems resolved. Each department met with special services twice during the school year.

The first session included a general awareness presentation. All handicapping conditions were defined and teachers were given information regarding the various characteristics of each handicap, so they would be comfortable in their classroom working with students who might possibly have these handicaps.

The second session was devoted to informing teachers of their responsibilities in screening, referral, and diagnosing then in process. The district diagnostic processes were described and diagnostic staffs were introduced to each department member, so they would have a first name basis with this group. Regulations regarding placement were discussed so teachers would know exactly where their responsibilities fell.

In the summer of 1979, an awareness program was adopted for students. This was a joint project between the school district and the University of Kansas. One goal in the educational process is to work toward the establishment of a community environment in which the handicapped individuals of all ages can comfortably live, attend school, seek employment, and participate in civic and recreational activities. We felt that was extremely important.

Our special educators and other professionals have moved into more integrated and normalized settings and a major obstacle that cannot be hurdled by legislation has blocked the success of these goals. The obstacle is the prejudicial, discriminatory, and negative attitudes toward handicapped individuals found in people of all ages and in all segments of our society.

In an effort to thwart the failure of integration, and to promote the acceptance of other students of the handicapped, we used various intervention strategies.

The first semester the program was introduced in all ninth grade health classes. We have approximately 500 freshmen. The first semester, half of the freshmen take health and the other half take P.E., so the first 250, of course, were in the health classes. The original curriculum design included 10 1-hour sessions following a format in Appendix A. The curriculum included both pre- and post-testing measures on both the student's knowledge of various handicapping conditions and their attitude toward the handicapped.

After a careful review of the first semester work, it was decided to shorten the program to 5 1-hour sessions this semester, so an additional 250 freshmen, as well as 500 upper classmen participated in the project.

The upper classmen were included in this program to see if there were any significant differences in their knowledge of handicapping conditions and to see if they had a greater degree of sensitivity to the problem.

After the second semester was completed, the evaluations of both semesters were compiled with the following results. Instructional programs designed to teach nonhandicapped individuals about handicapped were very effective in changing both knowledge and attitudes.

Second, upper class students tended to express more positive attitudes toward the handicapped than did the lower grades or freshmen. Females were found to express more positive attitudes toward handicapped than males.

Third, students were very receptive to and positive about the curriculum. The majority of the students, 85 to 95 percent evaluated the curriculum and media as good or excellent. Over 90 percent stated they had learned new information from the curriculum presented and they found such a curriculum to be interesting and important to high school students. Eighty-five percent of the students felt the curriculum should become a permanent part of the high school curriculum.

As a result of the study, the school district has adopted the curriculum as a mandatory part of all freshmen health classes in all three of the high schools in St. Joseph.

On the next page is a list of the goals we hoped to achieve with this program. The students will have a greater understanding of their fellow students with handicaps. The students will develop a positive attitude toward the handicapped and so forth.

The students of the next generation, and that is the most important one, as far as I am concerned—students of the next generation of citizens and voters will have a positive attitude toward the handicapped and support legislation which will assure the right of the handicapped and support services for the handicapped.

Fourth, students as the next generation of employers and employees will have a positive attitude toward the employment of handicapped and, five, students as the next generation of parents will be aware of the services available for young handicapped children. Students will know the factors which increase the risks of having a handicapped child.

We decided to place the program on the ninth grade level because by doing so, this would give the children an opportunity to work with handicapped students for the next 4 years. It seemed to be the logical place to put the program.

We went from the 10 to the 5 sessions, because we felt we were losing students on about the seventh or eighth session. This was done in conjunction with the University of Kansas. Ms. Jan Reinhardtsen, a graduate of ours, a doctoral student, had the program similar to this. We combined and worked with her on this program and have been quite successful.

I might add the response of the students, the level of questions they asked, their concerns regarding birth defects, regarding what they could do to help handicapped students in the school, was almost unbelievable.

For example, this year the students who were involved in the program last year, of course, are sophomores. It just so happened that most of these children who are sophomores now are in the same gym classes as we have the orthopedically handicapped and eat with them during lunch period. The teachers have commented that these students who were in the classes seem to respond to the handicapped children in a much more positive vein and are very comfortable in the setting with them, in the P.E. classes. They are very accommodating. They are not patronizing in any way, shape or form.

I think an educational program of this nature on the lower levels of high school or, perhaps, even grade school, would certainly be beneficial in promoting special education. It's a program designed to be flexible, that can go into a social science class. It could go into health. It could go into a multitude of variables and at different age levels and really do an effective job of promoting special education in our schools.

In conclusion, I certainly want to thank you for the opportunity to come before the group and explain our program. We are extremely pleased and proud of it. If you have any questions, we will be more than glad to answer them.

Mr. SIMON. Thank you. It sounds like an excellent program.

[The prepared statement of Bill Tarpley follows:]

PREPARED STATEMENT OF BILL TARPLEY, PRINCIPAL, CENTRAL HIGH SCHOOL, ST. JOSEPH, MO.

Central High School has an enrollment of approximately 2,000 students in grades 9-12. It is one of three public high schools in Saint Joseph, Missouri. The student body is representative of a broad cross section of the various socioeconomic levels. The staff is made up of 121 variously certificated teaching personnel. Central High School has handicapped students who are learning disabled, mentally handicapped, behavior disordered, orthopedically handicapped, health impaired, partially sighted, blind, hearing impaired and speech impaired.

In the last three years as prescribed by P.L. 94-142, the administration of Central, has made a serious effort to develop an awareness program for the entire staff. These programs have been supported partly through local effort and partially through 94-142 entitlement funds. As Principal of Central, I have been asked to present the various programs recently introduced to the staff and students with regards to the handicapped.

In the fall of 1978, in conjunction with the Department of Special Services, mini-workshops were developed for all professional staff. These workshops were presented on the department level. Each department met with the Special Services Staff twice during the school year.

The first session included a general awareness presentation. All handicapping conditions were defined, and teachers were given information regarding the various characteristics of each handicap.

The second session was devoted to informing teachers of their responsibility in the screening, referral, and diagnostic processes. The districts diagnostic procedures were described, and diagnostic staff were introduced to each department member. Regulations regarding placement were discussed.

In the summer of 1979, an awareness program was designed for students. This was a joint project between the school district and the University of Kansas. One goal in the educational process is to work toward the establishment of a community environment in which handicapped individuals of all ages can comfortably live, attend school, seek employment, and participate in civic and recreational activities. As special educators and other professionals have moved into more integrated and normalized settings, a major obstacle that cannot be hurdled by legislation, has blocked the success of these goals. This obstacle is the prejudicial, discriminatory and negative attitude toward handicapped individuals found in people of all ages and in all segments of our society.

In an effort to thwart the failure of integration, and to promote the acceptance by other students of the handicapped, we used various intervention strategies.

The first semester this program was instituted in all ninth grade health classes (this included approximately 250 freshman). The original curriculum designed included ten (10) one hour sessions following the format in appendix A. The curriculum included both pre and post test measures on both the students knowledge of the various handicapping conditions, and their attitudes toward the handicapped.

After a careful review of the first semesters work, it was decided to shorten the program to include five (5) one hour sessions. This semester saw an additional 250 freshman, as well as 500 upper classmen, participate in this project. Upperclassmen were included in this project to see if there were any significant differences in their knowledge of handicapping conditions, and to see if they had a greater degree of sensitivity to the problem.

After the second semester was completed the evaluations of both semesters were compliled with the following results:

1. Instructional programs designed to teach nonhandicapped individuals about handicapped were very effective in changing both knowledge and attitudes.

2. Upperclass students tended to express more positive attitudes toward the handicapped than did the freshman.

3. Females were found to express more positive attitudes toward handicapped than males.

4. Students were very receptive to and positive about the curriculum. The majority of the students (85% - 95%) evaluated the curriculum and media as good or excellent. Over 90% stated they had learned new information from the curriculum presentations and that they found such a curriculum to be interesting and important for high school students. Eighty-five percent of the students felt that the curriculum should become a permanent part of the high school curriculum.

As a result of the study, the school district has adopted the curriculum as a mandatory part of all freshman health classes for all three district high schools.

CENTRAL HIGH SCHOOL
St. Joseph, Missouri
Bill Tarpley, Principal-816-279-6303
Jan Reinhardtsen, U. of Kansas-913-588-5955

A CURRICULUM ON HANDICAPPING CONDITIONS AND THE HANDICAPPED FOR HIGH SCHOOL STUDENTS

Goals:

1. Students will have a greater understanding of their fellow students with Handicaps.

2. Students will develop positive attitudes toward the handicapped and be more receptive to the placement of facilities for the handicapped in their communities and neighborhoods. Students will have a greater understanding of the needs of their handicapped neighbors.

3. Students as the next generation of citizens and voters will have a positive attitude toward the handicapped and support legislation which assures the right of the handicapped and support services for the handicapped.

4. Students as the next generation of employers and employees will have a positive attitude toward employment of the handicapped.

5. Students as the next generation of parents will be aware of the services available for young handicapped children. Students will know the factors which increase the risks of having a handicapped child.

CURRICULUM OUTLINE

MONDAY
- a. Introduction and Goals
- b. Physically Disabled
- c. Prevelence of Handicapping Conditions

TUESDAY
- a. Deaf and Hard of Hearing
- b. Blind and Visually Impaired

WEDNESDAY
- a. Mental Retardation
- b. Type of School Placements available for Handicapped Students (Demo Cascade of Services)

THURSDAY
- a. Learning Disabilities
- b. Speech and Language Impaired
- c. Careers working with the Handicapped

FRIDAY
- a. Emotional Disturbance
- b. Law and Rights of the Handicapped
- c. Risk factors which increase the risks of having a handicapped child
- d. Conclusion

MEASUREMENT

1. Test of Cognitive information regarding the handicapped and handicapping conditions
2. Attitude toward handicapped individuals Scale
3. Attitude Scale
4. Daily Curriculum Evaluation Final
5. Evaluation of Curriculum Module

STATEMENT OF THOMAS E. KINCAID, LEARNING DISABILITIES TEACHER, OAK PARK HIGH SCHOOL

Mr. KINCAID. I appreciate the opportunity to testify this morning before this subcommittee, as a secondary learning disabilities instructor.

In the interest of brevity I will depart from the written text and I will attempt to——

Mr. SIMON. We will enter the text into the record.

Mr. KINCAID. I will attempt to summarize, then, from that.

I am beginning my sixth year in Oak Park High School in North Kansas City School District, as a learning disabilities instructor. Since I was the first full time instructor at Oak Park High School, I had to develop a program suited to the unique needs of the school. Due to the lack of information available at that time about the secondary learning disabled student, portions of the program had to evolve through trial and error. Through the support of the Oak Park administrators and with the willingness of some classroom teachers to accept a new challenge, the program has progressed and grown. The learning disabilities staff now includes three full-time instructors who serve the approximately 2,200 students at Oak Park.

The program, in its current form, is not perfect by any means. It is constantly being reviewed in hopes of providing the best services possible while meeting the intent of Public Law 94–142. After 5 years of working daily to try and implement the intent of the law I feel qualified to comment on some areas of concerns that have arisen during this time.

My first concern deals with the IEP or individualized educational program; the parent conference. At the secondary level it is extremely difficult to get all of the classroom teachers, often five to six of them, the learning disabilities instructor, school administrator, parents and the student all to this conference, especially if it is not the initial conference. This requires a great deal of release class time for the teachers, since many of them have to attend four to five of these conferences. May leave immediately after school for other jobs, so it is not possible to hold them at that time. A possible solution would be to bring written goals and objectives to each classroom teacher, to the IEP conference and, then, if the parents object to any of the goals or objectives of the classroom teacher, to bring that teacher in at a later date to resolve the program.

Past experience has shown that in 99 percent of the cases, if the learning disabilities instructor and the classroom teacher have worked together on the goals and objectives the parents have found no fault.

My second concern deals with the class size for classes containing learning disabled students. I feel that some simple formula should be applied to arrives at an optimum class size, since these students often do require a greater workload for the classroom teacher. A class of 25, which includes 4 to 5 learning disabled students, requires much more time for preparation than a class of 25 regular students. If mainstreaming is to be effective I feel some relief must be afforded to the classroom teacher.

My third and greatest concern is the need for some kind of vocational training for those learning disabled students with severe problems. It seems a cruel form of injustice to offer these students support services through the school system and, then, to graduate them often with no marketable skills. They find that they are ill-prepared to compete in the job market, due to their learning problems.

For example, I had a student who could do a wonderful job on the metal lathe and yet could not read the instruction manual. He was an auditory learner. An employer who was not familiar with such problems or lacked a special training program geared to his needs would never give this young man an opportunity to prove what he was capable of doing.

Another example is of a young woman who is a recent graduate of our program. She enrolled for a couple of beginning courses at the community college. She failed there and eventually took a job with a little hamburger chain restraurant. She is now unemployed, recently married and awaiting the birth of her second child in January. She really has no marketable skills and yet held a very positive work attitude while in school. The prospects of this young woman competing successfully in the job market, given the events of the past few years, are not promising.

These two students, at least, have a high school diploma. Many drop out along the way because they feel the schools have nothing to offer them.

Those schools which are fortunate enough to have a vocational school often find themselves unequipped to handle the special needs of such students. Their programs simply are not geared for them and they lack the personnel and the resources necessary to make these adaptations.

There is a current television commercial which states, "Pay me now or pay me later." I feel, unfortunately, that this is the situation of many of our learning disabled students. Unable to compete in the job market, they fall back on society to support them through other social programs. Even if they do not require public support they all too often resign themselves to working at jobs far below their intellectual potential, due to their learning problems. This, then, takes a heavy toll on pride and self-esteem. We all share in the loss of this potential. Fortunately, such men as Nelson Rockefeller had the personal fortunes to overcome many of their learning barriers, to make the contributions that they were capable of producing.

I ask your consideration of these concerns and sincerely hope that they merit further investigation.

Thank you .

Mr. SIMON. Thank you very much.

[The prepared statement of Thomas E. Kincaid follows:]

PREPARED STATEMENT OF THOMAS E. KINCAID, M. ED., LEARNING DISABILITIES INSTRUCTOR, OAK PARK HIGH SCHOOL, NORTH KANSAS CITY SCHOOL DISTRICT

In 1975 the Congress of the United States took a bold and dramatic step forward toward meeting the challenge of providing an equal educational opportunity for all of the nation's handicapped youth, with the passage of Public Law 94-142. This act has probably done more to affect the education of our handicapped children, in a positive manner, than any other single piece of legislation. It will stand as one of the milestones in educational legislation; a statement not only to the nation, but to the world, of our concern for all who seek an education within our school systems, whatever their handicap.

I am beginning my sixth year at Oak Park High School, in the North Kansas City School District, as a learning disabilities instructor. Since I was the first full time instructor at Oak Park I had to develop a program suited to the unique needs of this school Due to the lack of information available at that time about the secondary learning disable student, portions of the program had to evolve through trial and error. Initially, I also had to conduct informal in-service sessions with the faculty to familiarize them with the program and to attempt to win their acceptance.

Services then, were first provided to students on a one to one basis in a resource room. This proved to be an unsatisfactory situation for several reasons. First, students had to voluntarily come for services on their unscheduled, or "free" time and they often opted for the student center, where their friends congregated instead. They didn't want to come to a room and receive "special" help from a stranger when they could be with their peers. Secondly, even though progress was being made with some students in remediating their basic problems these students often could not keep up with their classmates and therefore received failing grades. Finally, classroom teachers complained when asked to alter their materials and teaching methods to accommodate the learning disabled students in their classes. Teachers felt they simply did not have the time to meet the needs of these students and their "regular" students as well.

Consequently, the second year, I approached the remedial reading teacher, Mrs. Charlene Law, proposing that we team teach in classes already designed especially for students with reading problems which included slow learners, those with chronic reading deficiencies and those categorized as learning disabled who were carried on my case load. This would allow us to serve a greater number of students and would afford me the opportunity to see the students on a regular and frequent basis. It also provided the students with a less threatening situation in which to become acquainted with me. I found them, then, to be much more willing to come in for services, as well as providing additional support service in a group situation, after having worked with me in the classroom.

I also approached Ms. Deborah Pyle, a Biology instructor, suggesting that we team teach a section of Basic Biology geared to the particular needs of the learning disabled student. She determined the subject matter to be covered and I adapted it to their needs. This proved to be a successful venture, allowing most learning disabled students to meet their academic requirement on the first attempt, where previously many had failed.

Through the support of the Oak Park administrators and with the willingness of some classroom teachers to accept a new challenge, the program has progressed and grown. It now actively involves ten instructors in eight different subjects. The Oak Park faculty is, of course, served on a needs basis. The learning disabilities staff now includes three full time instructors who operate a resource room for the students in "regular" classes whenever possible.

The program in its current form is not perfect by any means. It is constantly being reviewed in hopes of providing the best services possible while meeting the intent of Public Law 94-142.

So, after five years of working daily to try to implement the intent of Public Law 94-142 I feel qualified to comment on some areas of concern that have arisen during this time.

My first concern deals with the I.E.P., or individualized educational program, parent conference. At the secondary level, it is extremely difficult to get all of the classroom teachers, learning disabilities instructors, a school administrator, the parents and perhaps the student, all to a conference. This requires a great deal of released class time for the teachers, since many have other committments after school. It would seem much more practical to bring the written goals and objectives of each classroom teacher to the I.E.P. conference, and then if the parents object to any of the goals or objectives of a classroom teacher, to bring that teacher in at a later date to resolve the problem. Past experience has shown that in 99% of the cases, if the learning disabilities instructor and the classroom teacher have worked together on the goals and objectives, the parents have found no fault.

My second concern deals with class size where learning disabled students are included. I feel that some simple formula should be applied to arrive at an optimum class size since these students often do require a greater work load for the classroom teacher. A class of 25 which includes four or five learning disabled students requires much more time for preparation than a class of 25 "regular" students. If mainstreaming is to be effective I feel some relief must be afforded to the classroom instructor.

My third and greatest concern is for the need for some form of vocational training for those learning disabled students with severe problems. It seems a cruel form of injustice to offer these students support services through the school system and then to graduate them with, often, no marketable skills. They find they are ill prepared to compete in the job market due to their learning problems. For example, I had a student who could do a wonderful job on the metal lathe and yet could not read the instruction manual. He was an auditory learner. An employer who was not familiar with such problems or who lacked a special training program geared to his needs could never give this young man an opportunity to prove what he was capable of doing.

Another example is that of a young woman who is a recent graduate of our program. She enrolled for a couple of beginning courses at the community college, failed there, took a job finally at a local hamburger chain restaurant. She now is unemployed, recently married and awaiting the birth of her second child in January. She really has no marketable skills and yet held a positive work attitude while yet in school. The prospects of this girl competing successfully in the job market, given the events of the past years are not promising.

Those schools which are fortunate enough to have a vocational school often find themselves unequipped to handle the special needs of such students. Their programs simply are not geared for them and they lack the personnel or resources necessary to make these adaptations.

There is a current television commercial which states, "Pay me now, or pay me later". I feel that, unfortunately, this is the situation for many of our learning disabled students. Unable to compete in the job market, they fall back on society to support them through other social programs. Even if they do not require public support, they all too often resign themselves to working at jobs far below their intellectual potential due to their learning problems. This, then, takes a heavy toll on pride and self esteem. We all share in the loss of this potential. Fortunately such men as Nelson Rockerfeller had the personal fortunes to overcome many of these learning barriers to make the contributions they were capable of producing.

Mr. SIMON. Ms. Jo Norris.

STATEMENT OF JO B. NORRIS, DIRECTOR OF SPECIAL SERVICES, PLATTE COUNTY R-III SCHOOL DISTRICT

Ms. NORRIS. Mr. Chairman, Mr. Coleman, and Mr. Erdahl.

I want to express my appreciation for the opportunity to present the following testimony. It is directed toward positive and negative aspects of Public Law 94–142. The testimony has input from district staff members, parents of handicapped children, as well as my views from both an instructor and administrative position.

Platte County R–III Schools, Platte City, Mo., has a student population of about 1,480, with rural and urban influence. The number of handicapped students served is approximately 170, with classes provided for elementary and secondary EMH, elementary and secondary learning disabilities and elementary speech therapy and language development.

Service classes for behaviorally disordered are provided through a cooperative effort with other districts, with the elementary middle school programs presently being located in the R–III district. The staff members of special services are four LD teachers, two EMH teachers, one speech therapist, three counselors, and a director.

The district has been operating under Public Law 94–142 for 4 years, implementing the meaning of the law through State and district interpretations. Initial implementation of the law brought a sharp increase in the number of handicapped children, evaluated and placed in special programs. Inservice learning sessions were used for special and regular class educators, to acquaint each specific group to their respective responsibilities and degree of involvement.

Public Law 94–142 was, and remains to be, most time consuming for the special services staff. The requirements of proper procedure places the steps of screening-referral, diagnosis/evaluation, placement, programing, and followup on the personnel who are responsible for full-time student instruction. The other activities of personnel development, census, awareness, screening, and program evaluation are usually dealt with after a working school day, when appropriate. This problem may be common to smaller districts, as the complaint of lack of money is frequently heard. To continue under the present requirements of the law it would be suggested that State time allowance be given to a special teacher for the extensive paperwork. This may be done by using substitute teachers or allowing a certain amount of time per student per week as release time, and providing for inschool staffing times, as opposed to the many that occur before and after school hours. This area of concern may be helped by law revision or money allocated for such.

The shining star of Public Law 94–142 is the parent involvement required from initial evaluation consent to program planning and placement. The degree of parent cooperation is quite varied, but it is no longer possible to involve a student in evaluation or special class placement without the parent or guardian being notified and given the opportunity to participate in the procedures being followed. Parent comments concerning Public Law 94–142 have been very favorable. Most are encouraged by the efforts of the LEA in working with their children and providing every service possible. A small minority of negative parental comments are that the procedural meetings, IEP development and followup are too time consuming and they would prefer to not be involved.

Another comment on the law. In many instances the time it takes to secure parental permission or confering to evaluate and begin the student's work-up is much too long. The required contacts and waiting periods often put a month or more from referral to initial diagnostic testing or whatever is appropriate. The staff tries to complete a child's process within 4 weeks. This is possible if all procedures are efficient and diagnostic time is available. Again, diagnostic time is worked into instructional schedules, which can cause a backlog of testing, particularly at the beginning and end of the school year.

Another area of concern, which naturally involves money, is related services. In most student cases this is interpreted very strictly, as related services that the district must provide are costly. Only those services which are considered absolutely necessary are written in a student's IEP. If the money was allocated for more related service activity, then, another question comes up—what constitutes a related service. The interpretation of this differs among the districts of the State. This sometimes can create problems with students who may transfer from one LEA with board related services to an LEA which does not allow for extra services, often because of the cost.

The demands of Public Law 94–142 vary from different specialized areas of education. It is found that the speech therapist requires much time to complete the necessary work, usually because of the greatest number of students served. Perhaps a less restrictive procedure for speech evaluation and IEP development could be more efficient.

Problems inclusive of the learning disabilities area are time to work with mainstream students, followup activities with regular class teachers, dealing with the behavioral needs of LD students and providing the secondary LD student with an appropriate alternative education program. Staff needs in LD are perhaps the largest, as it seems that diagnostic and programing of an LD child encompasses a wide range of areas. For example, one child may require or need services in the LD areas of gross motor, math computation instruction, psychological counseling, and visual perceptual training. It is not logical to expect one LD teacher to provide for these needs, yet most often this is the expectation of the school.

Specific areas of testing and evaluation are usually completed by the LD specialist, but once again, to fit all the duties into a day is not efficiently done. It is generally agreed that Public Law 94–142 has been beneficial in promoting the knowledge of learning disabilities and generally what is involved in the realm of a learning disabled person. However, some of the present problems are contributory to LD teachers leaving the field, as in other specialized areas. Many feel the unique problems they encounter in a school cannot be shared or sometimes understood by the regular classroom teacher or administrators.

They feel frustrated and often find that leaving the role of an LD teacher is the only immediate solution.

Hopefully these and other issues brought to light will show some of the everyday problems encountered in the area of learning disabilities and in the area of special education.

The testimony given to you, as a subcommittee, could perhaps serve as a basis for amending certain parts of the present law, to be more realistic and efficient for implementation in the schools.

Mr. Simon. Thank you very much.

[The prepared statement of Jo B. Norris follows:]

PREPARED STATEMENT SUBMITTED BY JO B. NORRIS, DIRECTOR SPECIAL SERVICES, PLATTE COUNTY R-III SCHOOLS, PLATTE CITY, MO.

Honorable Members of Congress:

I want to express my appreciation for the opportunity to present the following testimony. The documentation contained is directed toward positive and negative aspects of P.L. 94-142. The testimony has input from district staff members, parents of handicapped children, as well as my views from both an instructor and administrative position.

Platte County R-III Schools, Platte City, Missouri, has a student population of about 1480, with rural and urban influence. The number of handicapped students served is approximately 170, with classes provided for elementary and secondary EMH(educably mentally handicapped), elementary and secondary learning disabilities, and elementary speech therapy/language development. Service classes for behaviorally disordered are provided through a cooperative effort with other districts, with the elementary -middle school programs being presently located in the R-III district. The staff members of special services are 4 learning disabilities teachers, 2 EMH teachers, 1 speech therapist, 3 counselors and a director (combination LD and director).

The district has been operating under P.L. 94-142 for 4 years., implementing the meaning of the law through state and district interpretations. Initial implementation of the law brought a sharp increase in the number of handicapped children evaluated and placed in special programs. In-service learning sessions were used for special and regular class educators, to acquaint each specific group to their respective responsibilities and degree of involvement.

P.L. 94-142 was, and remains to be, most time consuming for the special services staff. The requirements of proper procedure places the steps of screening-referral, diagnosis/evaluation, placement, programming and follow-up on the personnel who are responsible for full-time student instruction. The other activities of personnel development, census, awareness, screening and program evaluation are usually dealt with after a working school day, when appropriate. This problem may be common to smaller districts, as the complaint of lack of monies is frequently heard. To continue under the present requirements of the law it would be suggested that stated time allowance be given to a special teacher for the extensive paperwork. This could be done by using substitute teachers, allowing a certain amount of time per student per week as release time, and providing for in-school staffing time(as opposed to before and after school). This area of concern may be helped by law revision and money allocation for such.

The shining star of P.L. 94-142 is the parent involvement required from initial evaluation consent to program planning and placement. The degree of parent cooperation is quite varied, but it is no longer possible to involve a student in evaluation, or special class placement without the parent/guardian being notified and given the opportunity to participate in the procedures being followed. Parent comments concerning P.L. 94-142 have been very favorable, most are encouraged by the efforts of the LEA in working their children and providing every service possible. A small minority of negative parental comments are that the procedural meetings, IEP development, and follow-up are too time consuming and they would prefer to not be involved.

Another comment on the law; in many instances the time it takes to secure parental permission, or conferencing, to evaluate and begin the student's work-up takes much too long. The required contacts and waiting periods often put a month or more from referral to initial diagnostic testing(or whatever appropriate). The staff tries to complete a child's process within 4 weeks. This is possible if all procedures are efficient and diagnostic time is available. Again, diagnostic time is worked into instructional schedules, which can cause a backlog of testing, particularly at the beginning and end of the school year.

Another area of concern, which naturally involves money, is related services. In most student cases this is interpreted very strictly, as related services that district must provide are costly. Only those services which are considered absolutely necessary are written in a student's IEP. If the money was allocated for more related service activity, then another question comes up; "What constitutes a related service?" The interpretation of this differs among the districts of the state. This creates problems with students who may transfer from an LEA with broad related services to an LEA which does not allow for extra services.

The demands of P.L. 94-142 are varied to different specialized areas of education. It is found that the speech therapist requires more time to complete the necessary work, because of the greatest number of students served. Perhaps a less restrictive procedure for speech evaluation and IEP development could be more efficient.

Problems inclusive of the learning disabilities areas are; time to work with mainstreamed students, follow-up activities with regular class teacher, dealing with behavioral needs of LD students, and providing the secondary LD student with an appropriate alternative education program. Staff needs in LD are perhaps the largest, as it seems that diagnostic and programming of an LD child encompasses a wide range. For example, one child may require (or need) services in the LD areas of gross motor(possibly adaptive P.E.), math computation instruction, psychological counseling, and visual perceptual training. It is not logical to expect 1 LD teacher to provide for the needs, yet most often this is the expectation of the school. Specific areas of testing/evaluation are usually completed by the LD specialist, but once again to fit all the duties into a day is not efficiently done. It is generally agreed that P.L..94-142 has been beneficial in promoting the knowledge of learning disabilities and generally what is involved in the realm of a learning disabled person. However, some of the present problems are contributory to LD teachers leaving the field(as in other specialized areas). Many feel the unique problems they encounter in a school can not be shared, or sometimes understood, by the regular classroom teacher or administrators. They feel frustrated and often find that leaving the role of LD teacher is the only immediate solution.

Hopefully these, and other, issues will bring to light some of the "everyday problems" encountered in the area of learning disabilities and other special areas of education. The testimony given to the subcommittee could serve as a basis for amending certain parts of the present law, to more realistic and efficient for implementation in the schools.

Mr. Simon. First of all, Mr. Tarpley, if I may just comment on two things.

I couldn't agree more that the attitude of the administrator is contagious. When administrators are negative, and unfortunately too many of them are, that catches on and when they are positive, as you are, that catches on.

The program you have designed for your health classes—that's the best thing I have heard about for some time. I think that is a great idea.

I appreciate your comments, Mr. Kincaid, on the vocational training. When the Vocational Educational Act comes up for reauthorization this next year, I think we have to be taking a look at this area.

All of you talked a little about the IEP. We have run into, basically, three problems through the years, regarding the IEP. One problem that has not been brought up here today, is the teacher making a 3-minute phone call somewhere and drawing up an IEP.

The second concerns teachers and administrators, feeling that the IEP is some kind of a contractual arrangement, so that they are reluctant to put down on paper something as a goal that may not be achieved. I think that has to be explained to parents and maybe to all those involved, that this is not a contractual arrangement and we may not be able to achieve everything stated.

The third is the problem that you talked about here today, and that is the length of time it takes to draw up an IEP. You mentioned one case of 4 weeks working on an IEP.

You mentioned one other thing, Ms. Wright, that concerns me and that is labeling. I don't know that there is any Federal answer to it. I talked to a 23-year-old woman, recently, who came into one of my open office hours in my district. It was clear she had above average intelligence, but she could not read and write and she had been placed in a class with retarded children—without being tested. Somehow she had been labeled and she labeled herself as a result. I don't know what we do on this, but this is a problem that I think we all have to struggle with.

I also remember one time, this was before Public Law 94-142, when I was serving as Lieutenant Governor of Illinois. We had a class that came to my door, wanting to meet me. I went out and said hello and so forth. I said, "What grade are you?" A little fellow piped up and he says, "We're in the fourth grade; we're the dumb class." It just really hit me, what were we doing to those fourth graders.

Again, I don't think there is any Federal answer on this. There are a lot of things that we can't do, but it is a problem that I think all of us have to be sensitive to.

The mainstreaming problem that you mentioned—here I think all of us have to use commonsense. Here again the problem came up today; it comes up at every hearing. There are parents who think Johnny or Jane has to be in that regular classroom, for understandable reasons, but sometimes it is not in Johnny and Jane's best interest to do so, and teachers and administrators have to be tough enough to do what is best for Johnny and Jane.

I am making all kinds of comments and not asking questions.

I will call on Mr. Erdahl.

Mr. Erdahl. As usual, Mr. Chairman, you have extracted the essence from their testimony.

One question that I have is on the IEP. Isn't there some way that uniformity can be put into it, at the same time, maybe it sounds incongruous, but maintaining the need for flexibility. At other hearings, some people have interpreted the IEP to have a whole ream of paper, while other people have said this can be one sheet. Do you care to comment on that? It seems to me it can be simplified and without being too perfunctory get the goal we are trying to achieve. As Mr. Simon said, it is not written in stone, it is not a life-long contract, it is the way some teachers and experts hopefully evaluate the possibilities for this individual. We have heard in other hearings too, people feel harrassed by it; the classroom teachers are sick of the time they have to spend on it; and they are ill equipped, at times, to prepare one.

Anybody care to comment on that?

Mr. Tarpley. My experience is back to the same point that I made originally. If, in fact, the administration of the building explains to the staff and the counseling department and your special services that this is a problem and recognize the amount of time that is going to be involved in writing these IEPs saying, "Let's get together as a group and do the best job we possibly can do and do it in the shortest time we can and still be effective," things can go well. But where you have your breakdown is when you have three or four interpretations of what an IEP really is and you can't get together on it. If you get together on it and decide that is what you are going to do, then, all of the parties involved seem to be much more comfortable in that role, and seem to do a much more efficient job in a lot less time. The number one key to the whole thing is communication between the various groups that are involved in writing the IEP. It can be a labor of love or it can be a flat labor.

Mr. Erdahl. That's a good way to put it. Yes, ma'am.

Ms. Wright. I would like to comment on that.

Two areas, really, on the IEP.

I think probably I am supportive of my special teachers, since I have been there and I know a little bit about what they are going through in writing the IEP, but there is a real problem with setting up the conferences. I can recall one personal instance that I had where there were about 16 phone calls between the parent and myself, back and forth, before we finally set up a time. I got everything together, everybody together, thought we are going to get this one done, and they didn't show up. Whose responsibility did it become again to get the whole process rolling? Mine, as a special teacher.

This sort of thing is just overwhelming to special teachers, plus they are worrying about their children, and a special teacher doesn't have one lesson plan per hour, as perhaps many regular classroom teachers do. If you have 10 kids you have 10 plans that you are concerned about that hour. If you have to be out of that class, someone else has to know how to implement those plans. A lot of this, I think, leads to the burnout that we have talked about.

The other thing on the IEP factor is in changing districts. I have had that happen to me this year. A child came in with a totally different IEP, very difficult for us to evaluate. The parents are saying, my child must have special services. We finally came to the conclusion, yes. It took awhile and really maybe we all would have felt more comfortable if we had had time to just throw that evaluation out and start over. We will do our own evaluation, but there is time wasted there. They have done one, we are doing one, there should be some carry-over that could be utilized without all this wasted time testing, the child's time. This is a concern, as I see it.

Mr. **Erdahl.** Thank you, Mr. Chairman.

Obviously we have heard from another excellent panel.

Mr. **Simon.** Mr. Coleman.

Mr. **Coleman.** Thank you, Mr. Chairman.

I have some questions here, and I hope we haven't repeated some of them, but I heard a lot about paperwork.

I would like to have some specific examples of this paperwork requirement that come from Public Law 94-142 that might be eliminated. I want your views on the specifics, not just general. I am not a teacher, and I am not a principal, so I don't really know what the paperwork requirements are from your end.

Ms. **Norris.** I would like to address that.

I think one of the things that requires so much time on our staff is when the evaluation is completed it requires a writeup, particularly if it is a learning disabled student. This can become very involved in the interpretation, the test used, the outcome of it. Again, if the child is placed, and you are writing an IEP, you are kind of being redundant because, if it is a good IEP and well done, this will include much of the same information. That's one part of it that I think requires a great deal of time, particularly if the person doing the writeup is also the teacher and the evaluator. It's like having three jobs to do and they are all basically the same.

Mr. **Coleman.** I would like to have a response from everybody and we'll just go down the line. Ms. Wright.

Ms. **Wright.** The IEP itself can become quite involved, and I think that they probably become more involved as we go along. Paperwork seems to create paperwork, as you mentioned.

In our district our IEP is four pages and it is kind of frightening when you first hand it to a new special teacher, because they are carbonized and that's 16 for each kid and, then, you have the supplementary IEPs that each classroom teacher does and you hand those to the classroom teacher and they look at the stack and they become a little overwhelmed by it. At the beginning of school there is a lot of paperwork. Bus routes for kids and lunches and on and on and on. All of this also comes at the beginning of school. Then you have a student move in that has to be diagnosed. There is a great deal of paperwork involved in the testing procedure.

Mr. **Coleman.** Let me ask you while you are answering the question, can we eliminate any of this, or is it just part of the necessary evils that go with the implementation of the Law?

Ms. **Wright.** To a degree it is a necessary evil. for documentation if nothing else. I think we all are finding the need for that, more and more, and yet I am wondering if perhaps some of it could not be condensed, if maybe we need quite so many pages to say the same thing—if maybe we need quite so many copies to say the same thing. Some of these kids' folders, you pull them out, they are really full. That has taken a lot of time and a lot of money that somebody is paying for.

Mr. KINCAID. I would say the same. Coming from the same district, the concerns that Ms. Wright has brought up are mine as well. We have the four-page form and by the time you go through this and you have the copies for everyone, particularly if the student has been in the program for several years, you have a great deal of paper.

Frankly, I don't have any simple solution as to how to eliminate or reduce the amount of the paperwork with the IEP itself. It just seems that so much needs to be done simply for documentation, so that everyone has a copy and input and knows what is happening.

Mr. COLEMAN. Mr. Tarpley.

Mr. TARPLEY. I hate to be so positive all the time, gentlemen, but quite frankly I can't see any other way of doing it.

I think the first thing we have to remember is that every child we have in special education inevitably has a parent. That parent thinks of that child as the most important thing in their life and as public educators we have to be sure that we do everything that we can possibly do to provide that child with the best education we can.

Now, if, in fact, doing this paperwork or being involved in this paperwork helps us to help that child, then, I don't think we have any choice. I think we ought to bite the bullet and do the best job we can and if, in fact, we can do things to eliminate some of this paperwork and still do the same quality of job, fine, go ahead and do it.

I have a very excellent support service in my special service group and they make every effort to minimize our difficulties. I think it is a problem, but I don't think it is something that we can say we are going to have to eliminate. These kids have special problems and we have to find out as much about them as we can to do the best job we can. We are just going to have to do these things.

Certainly you don't approach it in the same fashion as you do an ordinary classroom situation with ordinary students, but it is there; we have to do it.

Mr. COLEMAN. Mr. Kincaid, I know there has been some discussion about cutting short the roundtable discussions on the IEP. From my standpoint I would be reluctant to turn the IEP into so many separate briefs being filed by different people when I think that you can sit down face to face with the doctor or somebody who is an expert in another field and really discuss an individual together.

Let me ask each of you, briefly: Are you feeling any backlash from parents of nonhandicapped children in your work because handicapped children are in the classroom, or because your time is taken away, in many cases, from nonhandicapped students? What kind of parental attitudes do you find? Do the students feel they are not receiving enough attention?

Mr. TARPLEY. Are you talking about the regular students?

Mr. COLEMAN. Yes.

Mr. TARPLEY. I think that if the regular students feel that neglect, then that's our fault because we haven't educated them in regard to special education and the problems that these children have. For example, one of the parts of this program I presented to you gentlemen today is that the teacher would take half of the class, blindfold them, and have the other half walk them through the building and then they would come back and sit down and discuss how it felt to be blind. If we educate the regular classroom student in regard to the various kinds of handicaps, I think over a period of years, I don't think you are going a accomplish it over night, but I think over a period of years they are certainly not going to be too critical of the money spent on Public Law 94-142. But you cannot take a piece of legislation and sit down and say, OK, now, we are going to abide by this, because there is certainly going to be some backlash. We've got to go right on with the program and make it work. In the final analysis it is going to pay off for all of us.

Mr. **Coleman**. What kind of a response do you have?

Mr. **Kincaid**. I haven't run into a basklash from the parents of regular students. If I ran into any type of a backlash it would be from regular classroom teachers, where students have been mainstreamed and they are saying, how am I supposed to meet the needs of these children or given the numbers, particularly.

At Oak Park we have a team teaching situation, where we try and go in and give support services to these instructors, but still numbers is the problem. You have 25 students in here and four or five of them have a learning disability. It requires a great deal of, not only paperwork, but very often the secondary students are boys, often hyperactive and you put four or five of them or more in a classroom situation and simply control becomes more difficult than it may in a regular setting.

Classroom instructors are saying, I like the idea, I think the concept of us working together like this is fine, but we need to get the numbers down so it is more manageable or so I don't have to spend so much more class time working with this particular class than I do with my other classes.

Mr. **Simon**. If I may interrupt, just for a moment, because unfortunately I have to leave to grab a plane. I am going to turn the gavel over to Tom here.

I appreciate your testimony today. The witnesses that are yet to come, I have two of your three statements, which I will be reading on the plane. I will be reviewing the record and I appreciate Congressman Coleman hosting this and I appreciate his staff working on this also.

Let me put in one positive word here, because we tend to go over the problems in these kinds of hearings.

We had testimony here a few months ago from the State of Arkansas where, through a program, it was before Public Law 94-142, they identified a young man who was confined to a wheelchair not receiving any education. They got him an education, vocational rehabilitation and Arkansas picked him up, sent him to the University of Arkansas, sent him through medical school and he has now paid more in taxes than it cost for the entire vocational rehabilitation program in Arkansas, for the first 20 years of its existence. So it pays off not only in humanitarian terms, it pays off in just pure dollars and cents when we have a good solid program.

Thank you.

Mr. **Coleman**. Thanks for coming.

I guess Ms. Wright was the last one.

Ms. WRIGHT. I would like to respond to that.

I have heard occasional comments about, well, that sort of thing isn't done for my child. Look at it realistically in our district. To educate a regular student it costs a little less than $2,000 a year. Some of our special students are now averaging $4,500 a year. We have one case that I am aware of where there is an additional cost for this student of $125 weekly for catherization.

Pardon me if I sound negative. I don't intend to. I have all the compassion for the special students available, but I can't help but think that we will have a backlash. There are going to be some parents of nonhandicapped children that are going to say, I am paying my taxes, my child is not receiving the same thing from your district, the same amount of money, the same amount of time, and I do feel that we will have that confrontation one day on this.

Mr. COLEMAN. Ms. Norris.

Ms. NORRIS. I think that maybe some of the smaller school districts do not have this problem, in comparison to the publicity and the things that you all have had.

Most of the parent comments that we get are, from the nature of a mainstream student, maybe the parents of a child in a classroom where they mainstream the students are concerned about certain behavior or the time that the regular classroom teacher has to take to spend one-to-one on the mainstream student, but other than that they are not real concerned, at this point, about excess cost of things.

Mr. COLEMAN. Let me ask, as a final question, what existing inservice training is there for teachers, and do you think it is adequate in your various districts? A very brief yes or no.

Mr. KINCAID. I would like to see more inservice done for them. The inservice that we have done at Oak Park have been that which we have initiated within our building to try and educate those instructors there as to the way the program functions in our building.

We would like to see more done along this area, particularly perhaps with the building, as a whole or, I should say, maybe those instructors that in any way will be brought in on an IEP so that they have a better understanding of it and what will be expected of them.

An instructor will come and say, what happens if an LD student comes into my class and it is not a required subject and he doesn't have to be there, do I have to alter the curriculum for him? Where do I legally stand?

Mr. COLEMAN. You advise him?

Mr. KINCAID. That, or if we feel that we can't handle it or questions persist, of course, we go to our special services director.

Mr. COLEMAN. Mr. Erdahl, do you have any questions?

Mr. ERDAHL. No thank you, Mr. Chairman.

Mr. COLEMAN. Thank you all for coming. It was excellent testimony and as Chairman Simon says, all of it will be included in the record. I appreciate your comments today.

Ms. WRIGHT. May I comment on the inservice, please?

Mr. COLEMAN. I'm sorry.

Ms. WRIGHT. I have noticed a lot more inservice. Nine years ago when I started with the special services, it seems that there was very little and you were really out there kind of swimming by yourself, with those regular teachers and trying to explain to them.

This year I believe our budget for inservice is $138,000 in our district, and I know that in the last 2 or 3 years this has really been beefed-up. I think this is something that the districts are recognizing and is being provided.

I would agree with Mr. Kincaid, that probably we need to lean a little heavier on special services, but I do think it has been recognized.

Mr. COLEMAN. Mr. Tarpley.

Mr. TARPLEY. I think it has certainly become more sophisticated all along. I know that Mr. Cummings has gone to the various buildings asking which area are of most interest to the teachers and then developing inservice programs around those particular points of interest. So I think the teachers feel much mor secure when they can get those questions answered, all the way from, how do I grade a learning disabilities student in the regular classroom, as opposed to the other students, and how do I justify all sorts of minor questions? Well, these are certainly not insignificant questions. They are important to the teachers, but once you get these kinds of questions answered, the teachers feel much more comfortable in mainstreaming. So I think that these efforts in regard to inservice training certainly have been superb in the last 2 years and teachers have come to these workshops, large numbers of them, wanting this information. So it has been very successful.

Mr. COLEMAN. Thank you all again.

Our next panel is Mr. Tom O'Donnell, an attorney in Overland Park; Mr. Sid Clark, President of the Association of Children with Learning Disabilities here in Kansas City, accompanied by Ms. Juanita Blevins, Past President; and Ms. Madeline Wendland, President of the Missouri Coalition of Child Advocates of St. Louis.

We are starting to run out of members. And Mr. Erdahl also has time restraints and has to catch a plane. Again, I would ask if you could abbreviate your oral statements. If you can't, we are going to end up without time for questions and discussion.

PANEL: TOM O'DONNELL, ATTORNEY AT LAW; SID CLARK, PRESIDENT, ACCOMPANIED BY JUANITA BLEVINS, PAST PRESIDENT, ASSOCIATION OF CHILDREN WITH LEARNING DISABILITIES; AND MADELINE WENDLAND, PRESIDENT, MISSOURI COALITION OF CHILD ADVOCATES, INC.

Mr. COLEMAN. The first panel member is Mr. O'Donnell.

STATEMENT OF TOM O'DONNELL, ATTORNEY AT LAW

Mr. O'DONNELL. My name is Tom O'Donnell. I am an attorney, and for the last 5 years, I have been working in the area of education for handicapped children. I was a staff attorney at the National Center for Law and the Handicapped when 94–142 was passed. My primary responsibility there was to work with consumer groups and local educational and State educational agencies and the Federal Government in terms of preparing regulations that were going to implement the Act. We had a considerable amount of input, I felt, with regard to the outcome of those regulations.

Since that time, I have served as a child advocate representing parents and children seeking services. I have also served as a consultant to local education agencies and State education agencies implementing 94–142. I have conducted numerous inservice training programs for teachers and administrators, school board attorneys, and school board members as well in various States, including Missouri, Kansas, Indiana, West Virginia, and Illinois, among others.

I say all that because I think it has given me a unique perspective on 94-142 because I have seen it from both sides, both in trying to assist educational agencies in meeting their obligations under the Law, and helping them to interpret the Law, and also from the perspective of the parent who is seeking services.

Having said all that, I have a very positive attitude toward Public Law 94–142. I feel that it is working and that it does not need to be amended, but needs to be fully implemented. By that, I mean that all agencies responsible for providing services to handicapped children, including Congress, need to live up to the expectations that they raised in passing this legislation. I believe that Congress has to accept its responsibility in living up to the full funding that it authorized when passing this legislation.

I wish Mr. Simon was here because he made a comment this morning about having to answer some of his colleagues on the Budget Committee with regard to whether this money is passing through. I really feel strongly that it is not the responsibility of Mr. Simon or the education agencies to show Congress that it is passing through. I think now it is the responsibility of Congress to prove that it is not. I think they would be pleasantly surprised to find out that indeed when they authorize 10 percent increases over a year they are probably getting 20 percent worth of service out of most of the educational agencies that are given the money.

I am not negative towards educational agencies. I think they are doing everything they can to implement this Law, with some few exceptions, and those exceptions, I think, we probably could address, but they are the horror stories and not the majority, by any stretch of the imagination.

I would like for my written testimony to go into the record because I am not going to read it.

Mr. COLEMAN. Your full testimony will appear in the record.

Mr. O'DONNELL. Fine. I would like to address some of the issues that were addressed by the other people this morning.

I agree with Dr. Werner's comment with regard to interagency agreements. In representing parents, most often we encounter this particular type of a problem. The child is in need of education services, he is in need of related services, too, in order to benefit from that education. The educational agency may or may not have personnel available, or if they have personnel available, maybe they are strained in terms of what they can actually provide. We attempt to seek the services through another agency. This most often occurs with emotionally disturbed children where you seek services of a department of mental health or the community mental health center or some other agency like that. Community mental health centers are well aware, as well as the Department of Mental Health, that the Department of Education has the primary responsibility under Public Law 94–142 to provide these related services. They are reluctant to free up their money and their professionals and their time in order to provide these services.

Until, I believe, the proper agencies come to bear on these other agencies to provide these related services in a cooperative manner and that we encourage the educational agencies to imaginatively seek out these services and to help in cooperation with these other agencies in getting the services of children, we are not going to see the full implementation of Public Law 94–142.

I don't believe that the related services are burdensome in and of themselves. They are burdensome only when the full financial impact hits the local educational agency or the State educational agency with no recourse to services that generally are already available in a community.

One other point I would like to make is with regard to evaluations—evaluations of children, handicapped children specifically. There is not enough quality or numbers of diagnostic centers to deal with the numbers of children that need to be identified and assessed in order to receive an appropriate education. I think that Congress should really look—and I am not sure that it requires legislation—I think maybe only proper use of already available resources to provide incentives for the creation of their diagnostic centers. Evaluations are crucial. I think that it is obvious. The evaluation centers that we have available are limited in their resources. We need more and better quality diagnostic centers.

We need to also curtail the amount of time that is spent in evaluating a child. I represented several children who have been on waiting lists for as long as a full school year, not even assessed by the end of the first school year because there were not available resources. I think that is a tragedy. That child has already lost a very valuable school year.

One other point that has been raised consistently is about inservice training. I think inservice training is absolutely essential if we are going to carry out this Act. I noted in one of the teacher's testimonies this morning, in discussing the IEP, they talked about the amount of time, and teacher time particularly, in calling all of the child's teachers together for an IEP conference. I think that reflects some misinformation about Public Law 94–142. Public Law 94–142 does not require every teacher of the child to be present at an IEP meeting, only if it had been requested by the parent or the school district. The solution the gentleman presented was actually a proper solution in that what he suggested was submissions from various teachers of what their goals and objectives would be. This type of misinformation or misinterpretation of the Law is fairly consistent throughout the country. It is not endemic to Missouri or to northwest Missouri.

Least restrictive environment: I think this is the most misunderstood phrase applied to Public Law 94–142, access to the maximum extent appropriate. Every handicapped child shall be educated with nonhandicapped children. Its appropriateness is unique to the child. So if that is applied with the commonsense attitude that was mentioned this morning, it is going to fall out to be what is appropriate for that child, not what is appropriate for what the parent wishes or what the school district wishes, but what is appropriate for the child. I think that is important to keep in mind.

Where we get hung up is that school districts do have programs, existing programs, for handicapped children and they attempt to fit the child into that existing program rather than to truly individualize the education program and fit the program to the child. That takes imagination. Yes, it is going to take time. It is also going to take an understanding of what a least restrictive environment is and what is appropriate in terms of education for a specific child.

One final point about the IEP: That is that oftentimes, particularly with the severely and multihandicapped child, it will take a great amount of time to prepare that initial IEP. I think you have to make a distinction between the initial IEP and the review and revision of an IEP. An initial IEP may take considerable amount of time, but if it is done properly, any review or revision of that IEP should take a very minimal amount of time in dealing with a child consistently throughout their educational program and, as they progress. I think it is very important to make this type of distinction.

I also know of several school districts in the country that are starting to use sophisticated word processing and data processing equipment to develop IEPs and to retain information. I think this should be encouraged. There are certain basic things that can be done with a child's IEP program that are repetitious for a lot of children falling into the same sorts of categories or the same needs for programs, and you can utilize this type of equipment. Obviously, the bottom line is whether or not you have the equipment to begin with and whether you can afford it. I think we need to take a look a that as well.

I could probably go on and on. I don't really want to because I know you are under time constraints. I think the key term with regard to Public Law 94-142 is resources: financial resources, professional resources and interagency agreements are all some of the very basic elements that constitute the resources needed to fully implement this act. I don't think anyone is in disagreement with the intent or purpose of the act. I don't think I have ever met anyone, educator, parent, or other person that didn't believe it was necessary for handicapped children to have this act. What we do disagree on sometimes is perhaps the interpretation of the law. The courts can deal with that. The act does not need to be amended. It needs to be implemented.

I will stop there. Thank you.

[The prepared testimony of Tom O'Donnell follows:]

PREPARED TESTIMONY OF TOM O'DONNELL, KEMP & YOUNG, INC., OVERLAND PARK, KANS.

I appreciate this opportunity to testify before this Subcommittee on Select Education in regard to implementation of P.L. 94-142, the Education for All Handicapped Children Act. Before I begin my comments in regard to the implementation of this piece of legislation, I would like to provide you with a little information in regard to my experience and involvement with the education of handicapped children. I offer this information so that you are aware of my perspective in regard to the implementation of this Act.

I first became involved with P.L. 94-142 as a staff attorney at the National Center for Law and the Handicapped in South Bend, Indiana, in 1976. At the time that I joined the Center, the Bureau of Education for the Handicapped was holding hearings with regard to the development of regulations to implement the Education for All Handicapped Children Act, which had been passed in 1975. As a staff attorney at the Center I was assigned the responsibility for commenting on the various drafts of the proposed regulations prior to their submission in final form. In carrying out this responsibility, I was able to interact with various consumer groups, local education agencies, and state educational agencies, as well as federal officials, who had an interest in this Act and the regulations. After the final regulations were drafted and published, I spent a considerable amount of time consulting with parents, state and local school administrators, and advocacy organizations in regard to the intent and interpretation of the Act and the regulations. Since 1977, the effective date of the Act, I have had the opportunity to represent parents of handicapped children who were seeking services from local and state education agencies, and I have also served as a consultant to local and state education agencies in regard to P.L. 94-142. In the latter role I have conducted training seminars and have provided in-service training for both regular and special education teachers, administrators, school board attorneys, and school board members. I believe that my background and experience provide me with a unique perspective in regard to the implementation of this most important piece of legislation. I have been privy to efforts to implement the Education for All Handicapped Children Act, both from the perspective of the parent/advocate seeking special education and related services for a handicapped child and from the perspective of the local or state education agency attempting to carry out the mandates of the Act in providing special education and related services to all handicapped children within their respective jurisdictions.

Based on these experiences, my conclusion is that P.L. 94-142 is working. This Act, in my opinion, does not need to be amended at this time, but does need to be fully implemented. It is important to keep in mind in assessing the effectiveness of this Act that we are just beginning our third year of implementation of all of the provisions of the Act. And, this Act, like no other piece of legislation in the history of education, is requiring a mammoth undertaking by departments of education at the state and local levels. To fully meet the goal of this Act -- equal educational opportunity for all handicapped children -- will take time, imagination, patience, and the full utilization of all available resources, not only the resources of educational agencies, but also of agencies which have related responsibilities to children who are in need of educational services in the fullest sense of that term. To be fully implemented, this Act will also need the full support of the United States Congress. My optimism for the full implementation of this Act is based upon the realization by all of the agencies providing services to handicapped children that their cooperation with educational agencies in carrying out the goals of the Education for All Handicapped Children Act is essential.

The following comments address specifically those areas of concern which I have identified through my experiences in representing parents/advocates of handicapped children and consulting with local and state educational agencies. If these concerns are not addressed swiftly and intelligently, then my positive attitude toward full realization of the goals of this Act will appear to be "Pollyanna-ish" and naive. My primary concern, at this time, is that Congress recognize its responsibility in regard to the full implementation of this Act. When Congress was considering passage of this piece of legislation, it specifically recognized that "present financial resources are inadequate to meet special educational needs of handicapped children".* With that recognition in mind, Congress stated that it is "in the national interest that the federal government assist state and local efforts to provide programs to meet the educational needs of handicapped children in order to assure equal protection of the law."*

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* 20 U.S.C. 1401 (Historical Note).

These statements of findings and purpose led to the specific provisions passed in this Act which authorize appropriations to help meet the excess costs of educating handicapped children by state and local educational agencies. The amount authorized for grants to the states to provide special education and related services to handicapped children escalates, according to the terms of the Act, until it reaches a maximum of 40 percent of the average per pupil expenditure in public elementary and secondary schools in the United States multiplied by the number of handicapped children ages 3 through 21 being served in the state. This 40 percent maximum will be reached in fiscal year 1982 and will be applied for each fiscal year thereafter. However, it is doubtful whether the actual appropriations authorized under the Act will ever reach that maximum figure. Over the last two fiscal years, Congress has failed to authorize appropriations to meet the formula specified in the Act. For example, in fiscal year 1981, the Act provides that Congress may appropriate a maximum amount of 30 percent of the national average per pupil expenditure multiplied by the appropriate number of handicapped children served in a state. In Missouri, this grant figure would be approximately $54 million, which should have been made available to the state to help defray the excess cost in providing special education and related services to handicapped children. However, Congress authorized only enough funds so that on a pro-rata basis the state of Missouri received only $21.5 million for these purposes. Such a shortfall of revenues is important to note, not only because of the discrepancy in that which is authorized and that which is actually appropriated, but also because the actual dollar value of that $21.5 million has been seriously eroded by the effect of inflation. My point is that it is hypocritical of Congress to raise the expectations of educational agencies and parents of handicapped children in passing such legislation and then not following through with the necessary appropriations to carry out the legislation to its fullest effect. I have encountered relatively few educators who adamantly refuse to provide special education and/or related services for a handicapped child; but I have encountered a good number of educational agencies which have been stymied by a lack of resources, both financial as well as professional. This inability to locate professional personnel or to have available financial resources to contract with professional personnel to carry out the mandates of this law is the single most important concern of both parents and educators. Congress's failure to authorize appropriations in the full amount allowed by law contributes heavily to this dilemma.

There are some other points which I would like to raise with this committee which occur with some degree of frequency in my experience. One of the most persistent concerns parents have in regard to securing special education and related services for their children actually occurs before the demand for the provision of those services is made. I am speaking of the evaluation process which is mandated by this law. Many handicapped children remain on waiting lists to receive evaluations for as long as an entire school year. In that time, a child is often placed in a regular education environment or remains in an inappropriate educational setting. Part of the responsibility for these long waiting lists for evaluations rests with the local school districts as well as with state agencies. The local districts often insist upon doing their own evaluations even though they may not have adequate personnel to handle the number of children who are in need of evaluation. This waiting list could be reduced considerably if local districts would utilize other agencies or would be willing to accept evaluations performed by other school districts on children coming into their school districts for the first time. We are also in need, however, of more diagnostic centers and better utilization of the existing centers by the local school districts. It is my opinion that the waiting lists would be reduced considerably if the educational agencies would exercise less territorial imperative and more imagination and cooperation in the utilization of existing diagnostic centers. Again, if Congress provided full funding for this Act, educational agencies could provide more personnel or use the funds to contract for timely evaluations.

This Act places the burden of responsibility upon the educational agencies for identifying, evaluation, and providing free appropriate education to all handicapped children in their respective jurisdictions. This responsibility is very clearly stated both in the Act and in the regulations and, when a local education agency does not meet its responsibility, the burden of that responsibility falls upon the state educational agency. This is perhaps as it should be since the primary purpose of the Act is the provision of education. However, one of the most significant areas of concern in providing an equal opportunity for education for all handicapped children is the ability of that child to benefit from such an education. To address that issue, Congress included the concept of "related services" as a necessary element to be provided to some handicapped children in order to assure their full opportunity to an appropriate education. In so doing, Congress left the responsibility for the provision of those related services with the educational agency. Many of these related services have not traditionally been provided by educational agencies. Such a mandate provokes the dilemma which many local districts and, to some extent, state agencies confront in attempting to carry out the mandate of the law. That is, they must either employ professionals who can provide such related services, or contract with other agencies which may be able to provide such services. Both solutions contribute to the spiralling costs of providing education to handicapped children. The law specifically provides that the educational agencies may meet their obligations by agreements with other state and local agencies to provide such services. However, the law provides no mechanism by which the educational agencies can, in fact, carry out such agreements. If the other state agencies or local agencies do not wish to enter into these agreements, for whatever reason, the educational agency is forced into using its limited funds to provide all of the services which, of course, contributes to the increased cost of providing education. Although I do not believe that the Act need be amended in this regard, there must be an increased effort by those responsible for implementing this Act, including the Office of Special Education in the Department of Education, to assure that other state agencies are providing services which can assist handicapped children in benefiting from their educational programming provided by the educational agencies. Again, Congress has placed a heavy responsibility on the departments of education in the states without providing them the necessary resources, whether they be financial or legal, to assist them in carrying out this responsibility. The federal agency responsible for the full implementation of this Act must be given the authority to utilize its considerable influence on other agencies which may be able to provide "related services" to handicapped children receiving the appropriate public education from the educational agencies. It is only through cooperation, whether it be voluntary or involuntary, that all of the goals of this piece of legislation will even begin to be fully realized.

There are two specific provisions within the Education for All Handicapped Children Act which I wish now to address. One of the provisions requires in-service training for professionals. The other specifically defines related services as applicable to this Act. In my five years of working to fully implement this piece of legislation, it has become painfully aware to me that much of the information with regard to the requirements of this Act and the provision of services required by this Act is not being communicated to those who have first-line responsibility for carrying out this Act. I am speaking specifically of the classroom teachers and, more specifically, of those classroom teachers in traditionally regular education classes. One of the mandates of this Act is that "to the maximum extent appropriate" handicapped children will be educated with nonhandicapped children. Because of much misinformation and misunderstanding with regard to the intent of this provision, many teachers who have not been exposed to handicapped children are concerned and fearful of receiving these "special children" in their regular education classes. I have conducted many in-service training programs for teachers, but, invariably, I am speaking only to those special education teachers who already know and understand what it is like to teach these special children. When I do encounter regular classroom teachers, I am often surprised by their lack of information with regard to their responsibilities and also to their rights. Many of these teachers have expressed concern about having to teach "dual" classes. By "dual" classes I refer to those instances where handicapped children have been placed in a class with nonhandicapped students and the teacher has been instructed to use two separate texts, one for the nonhandicapped students and the other for handicapped students. It is my opinion that this is not the intent of the law in providing for handicapped students to be educated with nonhandicapped students. In fact, I would suggest to this committee that personnel who are interpreting the law in such a manner are doing so to undermine the purposes of this Act. In that regard, again, I do not believe the Act needs to be amended, but more emphasis needs to be placed on in-service training of non-special education teachers as well as the special education teachers. We are dealing primarily with an attitude. Attitudes cannot be changed through legislation, but they may be changed through persuasion and demonstration that the intent of the law is consistent with sound educational philosophy. It is not sound educational philosophy to place a handicapped child in a class with nonhandicapped students who function at a level so much higher as to frustrate and demean the handicapped child's attempts to learn. In fact, such a placement is inappropriate and in contravention of the basic tenets of the law itself. Nevertheless, it is my experience that such actions have been taken by school administrators and allowed to happen by classroom teachers without question.

As to related services, which were mentioned previously, there is much confusion as to when a related service is educationally beneficial to a child and required, and when it is, perhaps, beneficial to the child but not necessary to that child's education. Also, the types of related services which are required to be provided by the educational agency, either directly or by contract under this Act, are left open to interpretation as well. It is my opinion that this particular issue can be addressed through more specific language in the regulations implementing the Act. Specifically, it is my opinion that the Office of Special Education must more clearly define, if necessary through itemization, related services which an educational agency must provide. And, the regulations must more clearly define, or at a minimum, provide guidelines, by which an educational agency can assess whether or not the related service is directly related to the child's benefiting from the educational process or is a discretionary related service which may benefit the child but not be necessary for his education. In the latter instance, the educational agency would have the discretion of providing the service or not.

Finally, I would like to comment briefly on an educational issue which is directly related to P.L. 94-142, but is generally ignored. I am speaking of the provision of vocational education for handicapped children. In my experience over the past five years, I have found most educators to be in agreement that many handicapped children can benefit from pre-vocational and vocational education. In fact, many believe that it is only logical that we begin to provide pre-vocational and vocational education for handicapped children at an early age. Many of these children will not be qualified to attend college, but are appropriately qualified to enter competitive employment in skilled or semi-skilled labor. However, many of the vocational training schools with which I am acquainted have such restrictive requirements for acceptance into their programs that many of the handicapped children, particularly the mentally handicapped children, never have a chance even to apply, much less to be accepted into those programs. In many instances, vocational education would be the "appropriate" education for a handicapped child. Instead, the entrance requirements of the vocational programs preclude the consideration of such children for those programs. Thus, the handicapped child upon completion of secondary education really has no place to go. The child does not receive enough vocational training, if any at all, to prepare him for the competitive labor market in any but the most menial of tasks, and, because of the handicapping condition, may not be eligible or qualified to attend the college or university. The only recourse this person may have will be to enter a "sheltered workshop." To qualify to participate in the sheltered workshop program in Missouri, the handicapped person may find it necessary to be classified as "unemployable" by vocational rehabilitation services. The result is that the handicapped child, at the end of his/her educational programming, is not adequately prepared to enter a competitive world. That result then comes to bear upon all of us when that person begins to seek services of state and federal agencies in order to survive. We need to take a careful look at federal and state support of vocational programs and, specifically, at the entrance requirements which we administer for those programs.

In summary, ladies and gentlemen of the committee, I would urge this committee to recommend to Congress that Congress take the lead in showing its support and its faith in the implementation of this Act by authorizing appropriations to the full extent provided by law. By so doing, Congress will demonstrate not only its support of the educational agencies mandated to carry out the provisions of this law, but also its support to those parents of handicapped children who believe in the goals and purposes of this law. Secondly, I would urge members of Congress, parents, and educators to be patient and tolerant in carrying out the mandates of this Act. Although federal laws mandating the education of handicapped children have been in full force and effect for the last ten years, it has only been over the past three years that we have demanded that state and local educational agencies provide such a wide-sweeping array of educational services to handicapped children. As much as we would like to think that we can accomplish so much in such a short period of time, it is apparent that we have not yet reached our goal. We must look at P.L. 94-142, the Education for All Handicapped Children Act, as a goal, and, as such, we must forever realize that to achieve that goal will take the cooperation and support of all of those involved with handicapped children, not merely those who provide education to handicapped children. As much as we would like to think that we can accomplish so much in such a short period of time, it is apparent that we have not yet reached our goal. We must look at P.L. 94-142, the Education for All Handicapped Children Act, as a goal, and, as such, we must forever realize that to achieve that goal will take the cooperation and support of all of those involved with handicapped children, not merely those who provide education to handicapped children. And until we realize the importance of such cooperation, the goal of P.L. 94-142 will always be out of our reach. Education is just one component for the full realization of that Act, but it is important to the full realization of providing equal opportunity for all handicapped persons in our society. We must not narrow our vision, nor so strain the resources of one agency as to destroy what is a fruitful and humane goal.

Mr. COLEMAN. Thank you.
Mr. Clark.

STATEMENT OF SID CLARK, PRESIDENT, ACCOMPANIED BY JUANITA BLEVINS, PAST PRESIDENT, ASSOCIATION OF CHILDREN WITH LEARNING DISABILITIES

Mr. CLARK. Thank you, Mr. Coleman.

I am Sid Clark. I am president of the Kansas City Association for Children with Learning Disabilities. I am accompanied by Juanita Blevins, our former president.

We have both been involved as parents in the Parent Association for Children with Learning Disabilities for about 15 years. That is about the point in time when our children were diagnosed as having problems.

We are parents. I think that is where the emphasis needs to be—where our interests lie.

I guess I didn't realize—maybe it is being a bit naive—no matter how much I am involved in this question of educating children, I am always amazed at the emotional degree of "dueling" that seemed to come out as we listened to the professional field deal with their frustration. I believe that basically is well intended. I would like to think that their frustrations and concerns come out of their commitment and desire to educate students. That is something that, to us as parents, is important because we can't afford to "burnout." We just can't afford it. It is our innate responsibility. We talk in terms of pressure to comply. We can't escape our pressure and we would hope that there is no need to escape the pressure of properly motivated direction, which we believe Public Law 94–142 is.

I would agree with Tom in that I have never really heard anybody who disagreed with the intent and purpose. It is the implementation.

In terms of the IEP, I think the concept basically is what we are about here today. The same concept that is behind an IEP. I would suggest that we can't hope to be informed and deal with the issues that exist and stand in the way of further implementation and success of meeting the educational needs of a child without this kind of dialog. I think it is participatory dialog that is the very heart of the IEP and the IEP is at the very heart of Public Law 94–142.

We know at this time that many IEPs are being prepared without parent involvement. It is just a fact. For whatever reason, we find that to be unsatisfactory.

The least restrictive environment has been addressed and addressed well in terms of definition. Our concern would be dealing with the temptation, to utilize the mainstreaming theme of the Law to make the regular classroom a dumping ground. We are concerned about it for the same reason that the professional educators are, that the cross-categorical disabilities concept and approach is just not acceptable; it is not practical; it will not work, it causes damage. It is damage that we live with and deal with as parents in the home as that child comes back from that environment to the home environment. This is a very major concern.

Mr. COLEMAN. Your full written testimony will appear in the record.

Mr. **Clark.** Our big area of heavy concern at this point in time as we think of preparing the learning disabled adolescent for adulthood is the area of vocational education. Basically, Mr. Tarpley earlier spoke about attitudes and we just have to endorse that completely that, you know, there does exist a "we/they" relationship. The fact is that we think that should not be. That would be our ideal. The IEP concept can help alleviate some of that.

Vocational education instrucors, for the most part, are instructors of skills. They just simply don't have the training to deal with our type of child and with our types of handicaps. We feel that there is a very definite need to not only address these vocational skill training elements, but to also deal with the attitude involvement that is concerned. Maybe at the very root of the attitude problem is their fear to really address in a meaningful way the needs of our kids. Their skills just aren't equal to that for the most part.

There are some concerns in terms of wording in the Law—not in Public Law 94–142— but in terms of using the words "health impaired" in the Missouri State's 5-year plan for VE programs. Learning disabled children do not qualify in many cases as being health-impaired. That also exists in the area of vocational rehabilitation. While Public Law 93–112, Section 504.84.3, the Nondiscrimination on the Basis of Handicap Act, the definitions specifically include LD as a qualifying "handicapped person." The 5-year plan for Vocational Education submitted in 1976 used the words "health impaired." We understand that that is being changed and they are dealing with that definition problem. We see it as a problem and many times people dealing with this type of situation rely upon old understandings of definitions. So we would ask that those types of enlightenments be made by those who are responsible to be sure that there is an understanding.

The identification of what related services are continues to be a concern to us. I am sure that our concern can be readily identified. They are not spelled out. We do have our own interpretations as to the needs of our children. We as parents cannot afford to be anything less than concerned and to pursue that need. In fact, I suggest that the day parents do is the day we have to have concerns.

The point of it is that this thing of eliminating and trying to control regression during the summer term is very important in many cases. The need that was spoken to earlier in terms of an extended school year is one we identify as being necessary and worthwhile and one that is worth pursuing the challenges to work out that kind of a program. Certainly community involvement is important, but we still see the system of education as we know it in our jurisdictions to be responsible and able to respond to that need.

Most importantly, before I stop. I think it would be important to go on record that we, as a parent advocacy group in ACLD, the State of Missouri and the Greater Kansas City area, do consider the way in which we work with our organizations that support our needs to be out of an atmosphere of cooperation, not controversy, and we do very much realize that the concerns we have, and it came out earlier today, are understood to a great degree and our problems are spread across many jurisdictions. I will say this. We do feel that any effort to not defend the letter of the Law from a parent perspective provides the opportunity for regression.

We have come a long way in the last 15 years. I think our objective has to be not on trying to solve workload issues and frustration issues, but in trying to meet the needs and objectives of the Law. Again, the focus is on resources.

Thank you.

[The prepared testimony of C. S. "Sid" Clark follows:]

Prepared Statement of C. S. "Sid" Clark, President, Missouri Association for Children With Learning Disabilities

Parent Perspectives on Problems of Implementation and Function of Public Law 94-142, the Education for All Handicapped Children Act

"INDIVIDUAL EDUCATION PROGRAMS (I.E.P.)"

From the parent perspective the I.E.P. procedure is the "heart" of Public Law 94-142. The proper conduct as outlined and intended in Sections 121a.341-121a.349 insures valuable integration of information, facts and feelings from professional, administrative and parental participants into, not only the communication of a determined program, but most importantly, into its actual development. We feel an I.E.P. lacking parental participation in the construction phase becomes greatly mitigated in its effectiveness potential. Some schools are following the practice of preparing the I.E.P. in the final form prior to the meeting with the parent. To do so eliminates invitation of parental insights and contributions and forestalls the support of mutuality available to the child when teacher and parent have worked together in a participating fashion.

We are also concerned that the team developing the I.E.P. many times does not include the "regular classroom teacher" or "vocational education teacher" as necessary to the needs of the specific child considered. The absence of these key participants is counter productive in that most times, out of non-familiarity with the child's special needs, their actions or absence of same interrupt the continuity of the remediation effort. We also feel the participation in the development conference with parents present also has a super positive impact on attitudes. The child benefits from the spirit generated in a "togetherness" planning and development experience.

We are aware that "related services" as specified in the law may not be included in the I.E.P. if not directly available within the servicing school district. Whatever the reason or motive for this practice, we are concerned that the public agency shall take steps to provide these "related services" as necessary to afford the educational opportunity equal to the intent of the law's statement and purpose.

"LEAST RESTRICTIVE ENVIRONMENT" (L.R.E.)

We have problems with this statement contained in Section 121a.550. Certainly, L.R.E. or "mainstreaming" is most desirable when the child's specific learning disability and the instructor's skills strike a compatible note. However, "regular" teacher skills are generally sadly lacking in terms of L.D. education technical training. In many cases the amount of time available for an "Education Resource Teacher" to supplement the child's unique handicap needs is grossly inadequate. In addition, the "L.R.E." provision can provide a most desirable alternative making the "regular" classroom mainstream a totally inadequate dumping ground for students deserving "self-contained" classroom or "purchased" services. Not all handicapped children should be "mainstreamed." It is often done under the intent of evaluating "how the child will respond." When he doesn't, time is lost and damage done.

Another concern surrounding "L.R.E.," is the view that Public Law 94-142 is a directive to "mainstream" all handicapped children in multi/cross-categorical "resource" and "self-contained" classrooms. Teacher training qualifications vary widely generally with training in one or two handicaps. The mixing of many handicaps is a totally impractical and unacceptable practice.

VOCATIONAL EDUCATION (V.E.)

The concerns in this area involve teacher training inadequacy and non-availability of services—particularly in the suburban districts.

V.E. instructors are simply not trained to work with handicapped. Therefore, they lack ability to modify instructions to meet unique needs or learning modalities. For these and other reasons V.E. instructors generally have resistant attitudes toward the handicapped.

Suburban district share a commonly funded V.E. facility and have an allocated number of student placements each term. The students accepted are those with the greatest success potential. This criteria eliminates V.E. opportunity for the handicapped.

The crying need in the V.E. area is for significant instructor training and more facilities. The handicapped desparately need V.E. opportunity.

One other concern in V.E. surrounds the definition of "handicapped" contained in the Missouri State's 5-year plan for V.E. Programs for the Disadvantaged and Handicapped. For a specific learning disabled person to qualify as handicapped, the disability must take the form of a "health impairment." A learning disabled person is not necessarily "health impaired" and accordingly would not fall under the program's umbrella. We understand this definition flaw is being corrected in the new plan currently being drafted, however, those who work with programs often fail to note subtle revisions of this nature and continue to implement based on former understanding. We are hopeful specific effort will be made to insure that those who need to be aware of the change and its significance will be counseled accordingly.

VOCATION REHABILITATION (V.R.)

According to local policy, learning disabled persons do not qualify for services. While Public Law 93–112, "Non-Discrimination on the Basis of Handicap Act" Section 504.84.3 "Definitions" includes Specific L.D. As a qualifying "Handicapped Person" V.R. services are denied because they are not considered sufficiently physically or mentally impaired which is in direct conflict with Public Law 93–112. V.R. services are needed and we appeal for correction of interpretation and the resulting inequity.

PRE-SCHOOL SERVICES

While Public Law 94–142, Section 121a.122 insures free appropriate public education for all handicapped children beginning age 3, it defers to state law with respect to ages 3, 4, and 5 to the extent that the requirement would be inconsistent with state law. Missouri law states free public education commences at age 5.

In the cases of the identified L.D. children ages 3 or 4, we feel their maximum ultimate potential could be enhanced by beginning utilization of available services immediately, in contrast to awaiting age 5. We question the deference to the public policy of the state on the basis of need and possible inequity in that a 3-year old in one state could receive services and in another could not.

TEACHER TRAINING

While Missouri is in the process of revising certification requirements for "special" teachers, it appears the "regular" teachers' required curriculum contains few requirements focusing on the area of "special education." Our sensitivity in this area continues. In-service training opportunities for "regular" teachers are rare and inadequate. While many have voluntarily participated in special situations, teachers cannot be required, without compensation, to participate in training which is scheduled outside of normal school hours. We would like to encourage all administrators to give serious consideration to ways and means of enabling a significant concentration of in-service training of the "regular" classroom teacher in the area of special education and the LD child.

DIAGNOSTIC INADEQUACIES IN RURAL SYSTEMS

In some rural systems there is resistence to identification of an LD handicap. In addition, it is sometimes difficult to put together an adequate diagnostic team due to nonavailability of appropriately qualified personnel. For this reason service quality is suffering in terms of timeliness and adequacy.

SUMMER SCHOOL SERVICES

Depending upon the type of disability and degree of disability, some persons require an ongoing educational service in contract to the traditional September thru May term. Constancy and continuity in these cases contribute to the special developmental needs and diminishes the risk of regression. Summer continuity services are not available in some areas, raising the challenge of alternative service planning by the responsible system.

Closing Comments: We know that many of the concerns we express are shared in equal degree throughout many jurisdictions. We know our local systems and State Department of Education share many of our concerns with similar awareness and intensity. We also appreciate the need for the *evolving* development and refinement of Public Law 94-142. We have welcomed this opportunity to contribute to the common need. We have done so with confidence and expectation.

Mr. COLEMAN. Ms. Blevins, do you wish to add anything?

Ms. BLEVINS. Not at this time.

Mr. COLEMAN. Thank you.

Ms. Wendland, you came a long way to be with us here today.

STATEMENT OF MADELINE WENDLAND, PRESIDENT, MISSOURI COALITION OF CHILD ADVOCATES, INC.

Ms. WENDLAND. Thank you for giving me this opportunity to be here today.

My name is Madeline Wendland and I represent the Missouri Coalition of Child Advocates, an organization concerned with the implementation of appropriate education for handicapped children.

Incorporated just in August, we serve an expanding five-county area.

Most of our experience to date has been in the St. Louis County, which includes some 13,000 handicapped children from some 23 local school districts.

St. Louis County is fairly unique in that the education of all of its handicapped children is the exclusive responsibility of a single agency, the Special School District of St. Louis County. The local districts are then absolved of any and all responsibility. Missouri gives this arrangement its blessing in its current State plan, and I quote, "Each school district, except those districts included in a special district, and each special district, shall develop a plan and implement education services for the handicapped students."

In this Coalition's short existence, we have received or been made aware virtually of hundreds of complaints. In almost every instance there are three specific problems that stand out.

First, since 94-142 has not hit the top of the best seller list and since little effort on the part of the Special School District is made to effectively inform, parents simply do not know their rights. This is certainly evidenced by the relatively few consumer advocates that are testifying here today. These people are casually and neglectfully run over by the system. The Special District IEP manual urges professional staff to inform parents of their rights only "when appropriate." This, along with other documented practices introduced in our written testimony, is an invidious attempt to circumvent the basic procedural safeguards.

We are talking about discriminatory evaluation practices, canned and incomplete IEPs, illegal assignment, failure to implement services, failure to contract for services, denial of due process, failure to heed instructions of hearing panels, and segregation, just to name a few.

This leads to the second problem. Approximately 90 percent of these complaints indicate violations of basic rights and procedural elements of the Law. Narrow and economically convenient interpretations of existing statutes and regulations frustrates the basic intent of the Public Law 94–142 legislation. In an education system so large in student population and geographical area, rooting out causative factors is nearly impossible. The organization of education for handicapped children in St. Louis County is entrenched in an administrative system that can very effectively avoid compliance with Federal mandates by its complexity and can shift responsibility in the most expeditious manner.

This safe system in a befuddled attempt to implement the least restrictive environment provisions of Public Law 94–142 by paying what it calls integration fees to any local school district that is willing to accept handicapped children. So it is left to the whim and the good nature of our local school districts whether or not to accept these children into their schools.

How this disgraceful situation could exist is a question leading to the third most critical problem, lack of compliance enforcement. At the State level are failures to develop an effective monitoring procedure, as confirmed by a conversation with the State plan officer at the Office for Special Education in Washington. Failure to respond and act on individual complaints is verified by our written evidence. Most importantly, the flagrant disregard for Public Law 94–142 by absolving our local school districts of any responsibility for handicapped children in the current State plan. This has created dichotomies in that many services available to nonhandicapped children are not available to handicapped children in either adapted or regular form.

In numerous letters to the Missouri Department of Elementary and Secondary Education in the last few months I have attempted to promote enforcement actions with regard to violations of Section 121(a), 305 and 306. Those are program options and nonacademic services. Our own daughter represents a class of children who, according to the special district, are not handicapped enough to receive summer programing. This very same district, according to their July 1980 budget hearing, announced that they have assets in excess of $4 billion.

According to our local school district, they may not accommodate handicapped children in their summer programs. In one of several written attempts to evade the issue at hand, Assistant Commissioner Leonard Hall stated, "I am not able to offer you any regulatory assistance."

Repeated and fruitless attempts to gain State regulatory assistance led by my filing a formal procedural complaint with the Office of Special Education this July. At the Federal level I discovered that the situation was even more absurd. Our complaint is that our compliance specialist told me pointblank that there was nothing he could do.

During the course of several phone conversations I learned of the thousands of letters from parents that are received by OSE. It taxes their capacity just to open and read the letters, much less to do anything about them. From our own experience, our letters took at least 2 weeks just to be opened. I suppose I should not be surprised considering this is the agency that recently approved the Missouri State Plan with its segregationist policies.

This kind of negligence is perhaps the strongest indicator of the magnitude of the problem. Failure to develop effective policies to force compliance to already adequate statutes and regulations thwarts the full implementation of 94–142 in the State of Missouri.

Please refer to our written testimony plus extensive evidence for verification of complaints and specific details.

Thank you very much for allowing me to testify.

Mr. COLEMAN. Ms. Wendland, we don't have the written testimony.

Ms. WENDLAND. That is because we were given such short notice.

Mr. COLEMAN. You will supply that?

Ms. WENDLAND. Yes.

Mr. COLEMAN. We can Xerox it.

Thank you very much.

Arlen, do you have some questions of this panel?

Mr. ERDAHL. Thank you.

I have just a couple of questions that have come up. It is good, I think, for us to hear this side of the story as well. One is that parents don't know their rights. Ms. Wendland you brought that up. Why don't they know their rights?

Ms. WENDLAND. I don't think the school districts are utilizing the methods available to them to get the word out to parents. When they do use some of the methods, our observations are that the information communicated is not complete. In other words, what sometimes is communicated is only what the school district feels might be advantageous for them to communicate.

Mr. ERDAHL. You mentioned that, in your opinion, some of the handicapped children are not being adequately cared for. How are they being handled, if that is the right word? Are they not identified? It seems to me that we have heard there have been dramatic increases in the number of handicapped children with learning disabilities and other impairments that have been identified under this Law and at least in most school districts, hopefully are being given help, treatment, whether it is in the mainstream or a special class. Do you feel that many are in need of the mainstream or special class? Where are they?

Ms. WENDLAND. I was addressing the particular problems in our particular area. Of course, I did say that that concerns 13,000 handicapped children. The problem is a school system that is separate, a system of special education which is separate, a separate entity entirely from the local school districts.

Mr. ERDAHL. I don't follow you. I understand there are two methods in the State of Missouri that take care of handicapped children, through the school system or with severely handicapped, I guess that was mental retarded, through the State department with local funding, unless I misunderstood that.

Mr. COLEMAN. St. Louis is unique. It has its own countywide special school district funded separately from the local school district.

Ms. WENDLAND. Yes.

Mr. ERDAHL. You mentioned that they had "segregationist" or "segregational policies," would you enlarge on that, please?

Ms. WENDLAND. I tried to describe it in the testimony.

Mr. ERDAHL. And I will read your testimony.

Ms. WENDLAND. Let me quote you the example of my own daughter. Perhaps that will best exemplify this.

Mr. ERDAHL. If you don't mind, that was going to be my next question.

Ms. WENDLAND. Our daughter, the primary authority in education for our daughter is with the Special School District of St. Louis

County. Just this year we have been able to have our daughter placed in a regular school environment. That took much difficulty. Yet even though our daughter is attending a regular school—her classroom is like an island. It is not a part of that school. She does not have the opportunity to derive the services that are provided to other normal children attending this particular school. Some of those services are summer programs, Girl Scouts, Cub Scouts, there is a host of other services. The local school districts have absolutely no authority or they have no reason to provide it. They are totally absolved of any authority under State law for handicapped children. They don't even have to accept our children in their schools.

Mr. Erdahl. Thank you very much.

I have no further questions.

Mr. Coleman. Let me clarify one thing. Can you tell us how that school district originated; how was it created? Was it by a local vote or support petitions?

Ms. Wendland. Yes, it was. I understand it was by local charter and then several years back it was further supported by the passage of a State law which spoke to its legality.

Mr. Erdahl. In other words, there is a unique school district in the city of St. Louis, the county of St. Louis, that has a special mandated legislation that makes it somewhat different or peculiar from the rest of the counties in the State of Missouri, is that your understanding?

Ms. Wendland. As far as I know.

Mr. Erdahl. The lawyer could respond.

Mr. O'Donnell. If I can, I will clarify. Missouri does have statutes on the book which allow by vote of people in a region to create a special school district which would address the needs of handicapped children. St. Louis County did this. In fact they did it probably prior, as she pointed out, to the statute being passed. There was also a special school district in Pennescott County which has sort of become defunct, but, as I understand now, may be recreated, but it is possible, yes. They are unique. They do serve all of the handicapped children. That is part of their uniqueness.

Mr. Erdahl. Only handicapped children in the school district?

Mr. O'Donnell. That is right.

Ms. Wendland. It also includes vocational education as a very small percentage.

Mr. Coleman. We have heard today about tightening up the appeals procedure. Suggestions were made that the process might even be limited by statute, or that certain segments of the appeals procedure be done by a certain period of time. What are your feelings on this?

Mr. O'Donnell. With regard to that, Dr. Werner was testifying to the due process. I am familiar with the case he was citing to you because I was a consulting attorney on it to the attorney that brought the case, and at that time Missouri was under a different set of statutory requirements with regard to due process. We had calculated out at that time that it could take as long as a full school year, if not a calendar year, to go through the process. That has been changed, as Dr. Werner point out to you this morning. The law, Public Law 94-142 itself, in the regulations requires that from the time a parent or a school district initiates a request for a formal hearing to the time of decision, only 45 days shall elapse unless, by mutual agreement, that time is extended. We think that that is appropriate and we can work within that time. Oftentimes as an attorney you would like to have more time to prepare a case since usually the school districts already have their assessment evaluation material and you are challenging that, which means that you have to get an independent evaluation or someone else to come in from the outside. Sometimes we feel more under the gun, I think, than the school district would in terms of getting our act together.

I don't think it should be tampered with. I think it is adequate.

A personal opinion. The problem with due process, when you get to a formal hearing, in my opinion, you have lost, both sides have lost. You have so structured your positions that even if the objective panel comes out and says one or the other side wins, you are probably not going to comply or you are going to comply begrudgingly. You are never going to win back the parent to supporting the school district. So in one sense I don't think due process works because it is not going to work for that parent. It may work in terms of settling the issue for parents to come afterward and take advantage of it, but that parent is probably lost if you are going through formal due process. I don't like to get to formal due process as an attorney. We are for the informal process, but at times you are forced into a position, and oftentimes it is a legitimate position on both sides, but you are still forced into a position of taking it to a hearing.

Mr. COLEMAN. When you appeal from the administrative level to the courts, which court system do you go to?

Mr. O'DONNELL. It depends. I would appeal to both. You have access to both the Federal district court and the State court system. Usually the State has been appealing through the State court system. We have usually been appealing to the Federal district court system.

Mr. COLEMAN. Does anybody else have any comment on the appeal procedure?

Ms. WENDLAND. I would like to make a comment. I thought it was interesting that a school administrator would comment that the process was too lengthy when most of our parent complaints concerning the due process issue are that so many repeated attempts are made to delay making an appeal.

Mr. CLARK. The practicality of costs from the parent point of view.

Mr. O'DONNELL. Can I address that issue for a second?

As an attorney that has worked in this area for 3 years, I think in total if I accumulated all the payments I have received from parents I might be able to buy you a cup of coffee.

If you will look at the cases that are brought in this area of the law, you will find that most of them are brought by legal services agencies, public interest law agencies, the Missouri Protection Advocacy Services, which is created under the DDR, brings an awful lot—it represents parents in an awful lot of these hearings and other advocacy groups, such as the one that is being formed. I don't know very many plaintiff's attorneys in this area of law who are getting rich off of Public Law 94-142. I would like to dispel that myth.

The second is that it is costly for a parent to challenge the system. The system has the professionals. They have the evaluators. They have the psychologists who can do the assessments. They are usually on their payroll and they can do that. The parent has to go out and hire those people. The one that gets caught is that middle class parent. The wealthier parents pull their kids out of school and put them into private schools. The poor parent goes to legal aid and gets legal services to represent them. It is the middle class parent who winds up paying double. They are paying for all the services their child needs plus for representation at this hearing. I don't have much sympathy for the school district that complains about cost.

Mr. **Coleman**. One of you mentioned that IEPs were being drawn up without parental involvement. That could be for a number of reasons, but do any of you have any information that it was because the parent wasn't asked to participate?

Ms. **Wendland**. Yes. We have introduced written testimony, plus evidence, from some of the parents involved in our coalition to validate that completely.

Mr. **Clark**. In my own personal experience, we do have a terrific experience, because the counselor involved happened to be very dedicated to participatory involvement of the parent. Just from her own understanding, she went ahead and prepared the IEP before we were there. We asked for amending and things like that which didn't take place. Our experience has been tremendous. We applied the whole system intent in our own need and our own family. Our own situation was that had we not known—you know, I would like to throw out something we always must remember when we talk about parents, whether it is regarding legal fees or whether it is regarding their perspective of the school environment. Their lack of knowledge in concept covers a lot of areas and there is an area of intimidation, fear, anxiety, a preconceived idea about the receptivity of the school.

Mr. **Coleman**. Another question. Do you feel that the outreach from the Missouri districts which you are familiar with is sufficient to inform parents of the program in existence and their rights of participation?

Ms. **Blevins**. That would be an area in need of great improvement. Even though we as a parent organization try to help with the parent awareness and knowledge, it is really a terribly difficult job.

Mr. **Coleman**. Does anybody else have a comment on that?

Mr. **O'Donnell**. I think it is improving. When I first came back to Missouri—and I am a native-born Missourian—when I first came back to the Kansas City area I would have bet you that there would be 14 lawsuits filed by the end of the first year. I think it really has improved tremendously in terms of outreach. We still have a long way to go. There does seem to be some reluctance on the part of the school districts to fully inform parents, almost as if they would be inviting someone to come back to them and say, well, we want more and we want more and we want more. I am sure there are parents like that. Most parents are willing to work, the ones at least that I have encountered, are more than willing to work with school districts that are willing to work with them.

Mr. **Coleman**. Do you have anything else?

Mr. **Erdahl**. No.

Mr. **Coleman**. I want to thank you for testifying and I thank all of you for coming to the hearing.

We will now adjourn this hearing. We appreciate your participation. The hearing is adjourned.

[Whereupon, at 1:40 o'clock p.m. the hearing was closed.]

FIELD HEARINGS ON THE EDUCATION FOR ALL HANDICAPPED CHILDREN ACT

WEDNESDAY, NOVEMBER 19, 1980

House of Representatives,
Subcommittee on Select Education,
Committee on Education and Labor,
Washington, D.C.

The subcommittee met, pursuant to call, in room 2257, Rayburn House Office Building, Hon. Paul Simon (chairman of the subcommittee) presiding.

Members present: Representatives Simon, Miller, and Erdahl.

Staff present: Judith Wagner, staff director; Patricia Morrissey, professional staff assistant; Cheryl Kinsey, research assistant; Dianna Cregger, executive secretary; and Terri Sneider, minority legislative associate.

Mr. Simon. The subcommittee hearing will come to order.

We will start; my colleagues will be joining me.

The Subcommittee on Select Education began oversight hearings on Public Law 94-142, the Education for All Handicapped Children Act, in September 1979. In addition to holding hearings in Washington, D.C., we have held regional field hearings in New York City, Denver, Chicago, and Kansas City. We have heard testimony from almost 100 persons—individuals with a strong commitment to assuring quality educational opportunities for handicapped children. In their testimony these witnesses have voiced concerns, made suggestions, and endorsed the congressional intent reflected in Public Law 94-142.

The focus of the hearings for the next 2 days will be the final report of the Secretary of Education's Task Force on Equal Educational Opportunity for Handicapped Children. The Secretary's task force was one of the first initiatives of the new Department of Education. This particular initiative represents a serious, sustained attempt by the Secretary, and the Assistant Secretaries for the Office of Special Education and Rehabilitative Services and the Office for Civil Rights, to address and propose a plan to remedy the ills identified in past oversight hearings.

The task force report addresses four areas—data review and use by the Office of Special Education and the Office for Civil Rights, coordination between the two offices in cases of enforcement related to Public Law 94-142 and section 504 of the Rehabilitation Act, collaboration in policy development between OSE and OCR, and the development of cooperative assistance efforts. Witnesses from the Department of Education have been asked to summarize the elements of the task force report, and other witnesses have been asked to react to the report in terms of its potential impact on children, parents, teachers, and State, and local administrators.

Improving services for handicapped children and youth was a goal which Congress strongly endorsed when it passed Public Law 94-142 in November 1975. I hope that strong commitment among my colleagues still exists today. However, we are all faced with new competing pressures for funds—funds which are limited. The Secretary's Task Force Report for Equal Educational Opportunity for Handicapped Children outlines procedures and policies which may contribute to a new form of Federal responsiveness to States and local communities, and lead to more efficient, effective, and equitable use of available resources. Today we hope to explore the merits of the Secretary's plan—whether it serves to reach the goal established 5 years ago.

Our first panel of witnesses today is Edwin Martin, Assistant Secretary for Special Education and Rehabilitative Services, Office of Special Education, and Cynthia Brown, Assistant Secretary for Civil Rights, Office for Civil Rights. They are accompanied by Edward Sontag, Division of Assistance to States, Office of Special Education, and Ned Stutman, Division of Elementary and Secondary Education, Office for Civil Rights.

We are pleased to have you with us.

STATEMENTS OF EDWIN MARTIN, ASSISTANT SECRETARY FOR SPECIAL EDUCATION AND REHABILITATIVE SERVICES, OFFICE OF SPECIAL EDUCATION, DEPARTMENT OF EDUCATION, AND CYNTHIA BROWN, ASSISTANT SECRETARY FOR CIVIL RIGHTS, OFFICE FOR CIVIL RIGHTS, ACCOMPANIED BY EDWARD SONTAG, DIVISION OF ASSISTANCE TO STATES, OFFICE OF SPECIAL EDUCATION, AND NED STUTMAN, DIVISION OF ELEMENTARY AND SECONDARY EDUCATION, OFFICE FOR CIVIL RIGHTS

STATEMENT OF EDWIN MARTIN, ASSISTANT SECRETARY FOR SPECIAL EDUCATION AND REHABILITATIVE SERVICES, OFFICE OF SPECIAL EDUCATION, DEPARTMENT OF EDUCATION

Dr. MARTIN. We will present a short statement which Miss Brown will read, then Mr. Stutman and Dr. Sontag will give a briefing on the key aspects of the task force report and on the Memorandum of Understanding between the Office for Civil Rights and the Office of Special Education.

STATEMENT OF CYNTHIA BROWN, ASSISTANT SECRETARY FOR CIVIL RIGHTS, OFFICE FOR CIVIL RIGHTS, DEPARTMENT OF EDUCATION

Ms. BROWN. Mr. Chairman and members of the subcommittee: We appreciate the opportunity to participate in these hearings to review implementation of the laws which the Congress has enacted to ensure that handicapped children receive equal educational opportunity.

In both the Education for All Handicapped Children Act, Public Law 94-142, and section 504 of the Rehabilitation Act of 1973, Congress directed with unmistakable clarity that the isolation of handicapped persons be ended. Central to these laws was Congress recognition that in order for handicapped persons to benefit from an education and move into the mainstream of American life, their individual needs must be considered.

The Office of Special Education—OSE—is responsible for enforcing Public Law 94-142, and the regulations implementing that statute which were published on August 23, 1977 (45 CFR part 121a).

The Office for Civil Rights—OCR—enforces several civil rights statutes that prohibit discrimination in programs and activities receiving Federal financial assistance. This includes enforcement of section 504, which prohibits discrimination on the basis of handicap in federally assisted programs and activities. On May 4, 1977, the Secretary of the Department of Health, Education, and Welfare issued regulations to implement the statute. Upon the establishment of the new Department of Education those rules were republished without substantive change (34 CFR part 104).

Both sets of regulations require that handicapped children be provided a free appropriate public education. Moreover, handicapped students must receive that education in the least separate, most integrated community setting which their disabilities will allow.

Therefore, OSE and OCR have parallel responsibilities to insure that handicapped children receive the free and appropriate education to which Congress has said they are entitled.

Currently, over 4 million handicapped children are receiving an education pursuant to an individualized education program—IEP—as required by law. Many of these children are also receiving services that further enable them to benefit from their programs of instruction. Moreover, parents and guardians, the persons most familiar with the competencies and needs of their children, are insured a role in the formulation of their children's educational programs. To enhance the capability of recipients to comply with the requirements of the laws, the Department provides a wide range of technical assistance services. These include financial assistance for teacher, administrator, and parent training; demonstration projects that elevate the state of the art in teaching technology; and consultation on a variety of subjects.

Nevertheless, compliance with the laws remains incomplete. Full and effective compliance requires that the two agencies coordinate their activities to allow the Department to speak with one voice on matters that touch on equal educational opportunity for handicapped children. Within the former Department of Health, Education, and Welfare, the interactions between OSE—then the Bureau of Education for the Handicapped—and OCR were sporadic and informal. The problems that resulted included the appearance and, in some instances, the actuality of fragmented and inconsistent compliance policies, standards, and enforcement practices. These problems and others, recognized by both agencies, were also arrayed in several studies conducted by professional and advocacy groups. Recognition of the problems, both within and outside the Department, was the impetus for change. Further, the Congress establishment of the new Department of Education afforded opportunity for strengthening enforcement of the laws intended to assure equal educational opportunity for all individuals, including handicapped Americans.

During the transition period preceding the new Department, Secretary-Designate Hufstedler convened a Task Force on Equal Educational Opportunity for Handicapped Children. The task force members were directed to review criticisms of the Department's efforts to implement Public Law 94-142, and to recommend specific policies and procedures to improve the Department's performance. On June 9, 1980, the task force submitted an interim report which describes the evolution of the Federal legislation which assures equal educational opportunity for handicapped children. The report also discusses the activities of OSE and OCR and expresses the view that efforts should be made to formalize and structure the relationship between the two offices to ensure a definitive and unified enforcement process.

On July 1, 1980, Under Secretary Minter directed that the task force continue its work and implement the recommendations contained in the interim report. Under our direction, more than 30 staff members throughout the Department developed and carried out a detailed work plan which included 37 discrete inquiries. Much helpful information was gathered through this experimental interaction, which first identified theoretical problems of coordination and later formulated practical solutions.

The product of this intense process is the October 15 final report of the Secretary's Task Force on Equal Educational Opportunity for Handicapped Children. We are submitting the report as an addendum to this statement. We hope the report will be useful to the subcommittee as it continues to review educational programs serving handicapped children.

The final report is divided into five parts and includes several important appendices. It includes a Memorandum of Understanding—MOU—between the Office for Civil Rights and the Office of Special Education. The memorandum implements many of the recommendations included in the interim report in the areas of enforcement, data collection, policy development, and technical assistance. We consider the MOU the most important product of our efforts. We have designated staff resources on a full-time basis to insure that the commitments we have made to each other will be carried out.

However, we wish to highlight some provisions of the MOU which we believe represent the most significant advancements over past Department practices.

Since we believe that a permanent allocation of staff resources is necessary to ensure ongoing implementation of the MOU, each office has agreed to designate full-time senior staff for this effort. To further insure organizational accountability, the coordination function is being institutionalized by the establishment of new position descriptions which have already been drafted and are awaiting departmental clearance.

The MOU also provides for a coordinated and open system of policy development which is designed to reduce uncertainty among recipients and beneficiaries regarding requirements imposed by the parallel provisions of Public Law 94-142 and section 504.

The MOU also provides for joint development and implementation of compliance review, training, and technical assistance plans.

Mr. Chairman, the laws our agencies administer reflect a fundamental promise the Nation has made to its handicapped citizens—the right to develop individual talents to the fullest. We believe the activities now being undertaken will lead to more effective enforcement of the laws so that the promise they hold will be realized.

We would be pleased to answer any questions you may have.

I would now like to ask Ed Sontag and Ned Stutman to outline other aspects of the MOU.

STATEMENT OF NED STUTMAN, DIVISION OF ELEMENTARY AND SECONDARY EDUCATION, OFFICE FOR CIVIL RIGHTS, DEPARTMENT OF EDUCATION

Mr. STUTMAN. I am Ned Stutman, serving as the acting coordinator of the Memorandum of Understanding for the Office for Civil Rights. I would like to underline for a moment something the Assistant Secretary said which related to the fact that both offices are devoting staff resources to assure this document works.

It has been our experience that one reason the Office for Civil Rights and Office of Special Education have had an episodic working relationship has been the difference in organizational structure and size, so we believed at the outset that difference should be addressed.

As a result, the document reflects to the best of our capability our recognition that full-time staff resources have to be coordinated between the two offices.

The Office for Civil Rights, in addition to designating a coordinator serving in headquarters, has agreed to identify people in our 10 regional offices to assist in providing information and carrying out the other tasks which we have promised will be carried out.

I think something which could be characterized as administrative is the fact that the document in several different parts provides both offices will, on an ongoing basis, share information. That term has to be seen in a particular context. The context is from Office for Civil Rights' point of view the regular sharing of documents which we have developed in our regions so that headquarters staff will be aware at any point in time of the proposed action our regional offices are preparing to take on a variety of subjects which are their responsibility. Those documents are now being shared in a regular way with the Office of Special Education. We are prepared to discuss the proposed actions in a way that we can assure that the Office for Civil Rights when it takes an action also speaks for the Office of Special Education in matters that touch educational opportunity for handicapped children.

I think another major advance is the fashion in which we are going to deal with enforcement of the laws. As you know, the Office for Civil Rights enforces the provisions of section 504 by the use of complaints, individual complaints, by the use of compliance reviews. The Office of Special Education also utilizes such a system, but they have one further mechanism which reflects to periodic review of State plan submissions under the Education For All Handicapped Children Act. Dr. Sontag will speak as to how the memorandum speaks to State plan review.

I will say, however, with reference to complaints, the Memorandum of Understanding provides that the Office for Civil Rights will investigate any complaint submitted to either office which alleges facts which would constitute a violation of section 504 alone or section 504 and the Education for All Handicapped Children Act. Those complaints will be referred to Office for Civil Rights.

The Office of Special Education has the authority to concurrently investigate complaints that are filed against State education agencies. We believed in formulating this document this was important, because the Office of Special Education has by its experience developed a special relationship with the States, and we all believe that relationship should be enhanced and continue to flourish as it has. The Office of Special Education will continue to investigate complaints.

Dr. MARTIN. The practical significance of these two things Ned has mentioned is that in the past it was quite possible for there to be a problem and for there to be a complaint to both agencies, and each of us would begin a separate process of looking into this. In some instances one would say, well, the other guys are looking at it. We also had situations where the investigation would go forward under the Office for Civil Rights according to a court ordered, schedule and they would arrive at a conclusion before the special education people. So there was a sense of discontinuity as well as a wasted effort. In special education, we had only a small number of people to deal with compliance issues, whereas in the Office for Civil Rights, there were literally hundreds of people to deal with the great volume of complaints directed to the Office for Civil Rights. So you had the system where there might be hundreds of complaints being dealt with under tight time lines, and over here, a very small dog, in a sense, being wagged frantically by a large tail, trying to keep up with the administrative side.

Mr. SIMON. Is this automatic, if OSE gets a complaint, do you notify OCR and vice versa?

Mr. MARTIN. That is right. Furthermore, the degree of responsibility is already decided that OCR's investigative staff will take care of complaints with the exception of such instances where the State itself seems to be a focus of this activity. But as we go through it, what is so encouraging to me is the fact that it is a very difficult task to take a largely decentralized agency which will channel information to both agencies at the same time and do that in compliance areas, complaint areas, policy-development areas, technical assistance, and all the areas where we would like to work together. I do not think that would be possible if we did not have the Department of Education which brings us so closely together.

Mr. SIMON. Have I heard correctly that 40 percent of your complaints are on section 504?

Ms. BROWN. Forty-three percent of the complaints we received were section 504 complaints; that includes title VI, IX; 504 makes up 43 percent.

Dr. MARTIN. There are 4 million children participating in special education. I figured out one day if we had a 5-percent problem rate, that would be 200,000 cases, so you can see there are plenty of possibilities.

Mr. SIMON. I am just amazed at that statistic, nevertheless.

Ms. **Brown**. So are we.

Mr. **Stutman**. Just to briefly finish up, with reference to complaints, once the OCR concludes its investigation of a complaint, it will decide whether it is a statutory charge, the 504 question, and it will recommend to the Office of Special Education what it believes would be a legitimate resolution under Public Law 94-142. We expect that our recommendation will be useful to them. It will also provide, as Dr. Martin pointed out, for a unified resolution of complaints, so that the Department can advise recipients of what both enforcement agencies think about a given set of facts and the application of the law to those facts.

I think what I would like to do now is turn the microphone over to my colleague, Dr. Sontag, who will reference for you the procedure to be used in State plan submissions.

STATEMENT OF EDWARD SONTAG, DIVISION OF ASSISTANCE TO STATES, OFFICE OF SPECIAL EDUCATION, DEPARTMENT OF EDUCATION, AND NED STUTMAN

Dr. **Sontag**. Mr. Chairman, one of the most critical elements of our enforcement strategies is the approval of the annual plan, now the 3-year plan. Up until now it has been our primary and only enforcement strategy. Later we will be talking about strategies we hope to be using in the future.

Office for Civil Rights involvement in the approval process is seen by us as a proactive way in which to deal with possible problems that might exist in the plan or in the State concerning section 504 issues before approval of the State plan.

Office for Civil Rights has agreed to provide us with an analysis of outstanding complaint issues in a State prior to our final review of the plan, and has also indicated it will provide us with a written analysis of the plan. Those comments can be fed into our discussions with the State education agencies prior to our final decision.

One of the more interesting parts of the memorandum is that the Office of Special Education is stating that it will review all State plans within an established 75-day time frame. Until now, that process has been rather open-ended, and in some cases informal negotiations have been stretched over many months.

Mr. **Stutman**. We are doing very well coordinating this microphone.

The other enforcement mechanism to which I alluded before, Mr. Chairman, was what we call compliance reviews. The Memorandum of Understanding provides essentially two things with reference to compliance reviews. The first is that Office for Civil Rights and Office of Special Education will conduct together several compliance reviews. The second is that Office for Civil Rights and Office of Special Education will develop joint compliance activities plans early in the year which will allow both of us to plan not to be in the same place at the same time, unless we desire to do so, will allow us to use data based techniques to identify and select recipients for visitation, and also use and identify issues for scrutiny.

Dr. Sontag later in our presentation will reference how we expect to use our data in selecting recipients and issues for review. He will also outline for you a strategy that is developing, and perhaps even by way of example demonstrate how we expect it to work.

I thought in that regard, for the longest time that the most important product of our effort was the Memorandum of Understanding. I am inclined to believe now that is not the case. The most important product of the task force was appendix E, which is a codification of what we believe to be the most important issues we have to address, and also a listing of the data for us to use in addressing those issues. The synthesis of the existing data and the issues we want to address exposes to us what data we need to enforce the law.

I think I am going to allow Dr. Sontag later to address the use of data in a more detailed fashion.

The Memorandum of Understanding addresses the question of policy development. As I am sure you are aware, Mr. Chairman, the Department itself, the process by which it develops policy has been scrutinized fairly closely both from without and within. The Office for Civil Rights itself has the obligation and responsibility to develop policy, and the Office of Special Education has the same obligation. So, what we decided in this Memorandum of Understanding was to set out a well-defined process that provides essentially two important things: one is that we will, the Office of Special Education and the Office for Civil Rights, will develop policy together on issues which touch on our two statutes and regulations. We are going to do that in an ongoing way. The coordinators will have a responsibility to identify issues that need to be addressed. Again, we can look to appendix F as to those issues. We can look to frequency of complaints, we can look to outstanding litigation for issues in need of policy development, and we can look to reports from advocacy and administrative groups, as well.

We will develop policy together and attempt to submit those documents in a unified fashion to the Secretary. Whoever that may be in the coming years will have the opportunity to see, No. 1, that the position we want to take is unified, and if it is not, the Secretary will have an opportunity to make a determination as to what should be the position of the Department. The advantages to that are obvious. There will be a unified statement—I hasten to add, I want to correct a statement; I misspoke myself. There will be policy flowing between our office between now and January 20. I know who the Secretary is now, so we expect that Secretary will have the opportunity to allow this process to bear fruit in the coming months.

Dr. **Martin**. The question of policy is complex. Sometimes a specific complaint is responded to in a community by the Office for Civil Rights, and it must be responded to under certain time frames. The decision has to be made, will Mary or Johnny get this kind of service, and the office is pressed to make the decision. That puts us in a position where there may be an idiosyncratic policy that has to be made, and the question then is should those policies apply to the public at large, or are those activities peculiar to this particular child or particular school district.

Other policies are to clarify existing points of the law. One policy, for example, is our policy statement on the individual educational plan which is intended to help answer a number of questions arising as to IEPs, and also help some of the school districts to streamline the IEPs, which have gotten cumbersome. So that kind of policy is almost a technical-assistance tool.

In some instances the policies go into areas where the act is not completely clear. For example, while the legislation called for surrogate parents, there was no elaboration as to how they should be chosen, et cetera.

As we talk to people who administer the programs, there is a feeling there needs to be policy statements. The issue is that there often is not much agreement on what direction the policy should take. Some of the subjects are highly controversial.

Mr. STUTMAN. I wish to point out for the subcommittee, Mr. Chairman, that one new component of policy development with which we are experimenting now and will shortly publish in the Federal Register is a notice of intent to issue interpretive rules. That is a notice to all who are interested that the Department is contemplating developing policy in any given area. The notice that we are to publish within the next 30 days or so, includes six different areas in which we are intending to develop policy. Nothing has been formally written yet. That is a new development, and I wanted to bring it to your attention.

Dr. Sontag will now discuss how we intend to use the data we have identified in our compliance activities.

Dr. SONTAG. Mr. Chairman, prior to the convening of the Secretary's Task Force on Equal Educational Opportunity for Handicapped Children, the data that was collected was generally not in refined condition. It was not available for us to utilize in our compliance strategies. What we have attempted to do is develop a joint process where we can do an analysis of the data which both agencies offices collect. A vehicle exists whereby we can exchange that data and exchange it in a format that is useful to both the Office for Civil Rights and Office of Special Education.

By getting the data presented to us on a statewide basis it will be more useful to us. We will make every attempt to share our information with the States in a format that is useful.

We would like to describe some of the data that we have available to us at this time in a State where we had a compliance review conducted by the Office of Special Education.

Mr. SIMON. If I may interrupt, you mentioned a State which has been selected for a compliance review. How effectively are we monitoring all States, and for this fiscal year do we have the personnel to do the job we should be doing?

Dr. MARTIN. We have had a plan over the last few years to try to visit half the States each year, and then continue the next year. It has been difficult to carry out that plan for a number of reasons. There have been restraints on travel imposed, and the costs have gone up so much for the travel we did do, so that what happened in the last years was that we actually did not and could not complete 26 visits to the areas we wanted.

Last year there were in fact about 20 States that we were finally able to visit.

Part of what we have decided to do here and what we have worked up is a plan which would allow us to visit 31 States. By reorganizing resources available to us, without some of the restraints we had on travel previously, we have set up a plan to visit 31 States. Some of those can be visited jointly with the OCR, based on problems that are common to both our offices. In others, we will follow our routine practice of visiting the States, but looking for what we looked at in those States on the basis of the data.

There are two ways you can use the data. First, you could say if we find less than a certain number of children in a category, we will visit a State. If we find a certain characteristic of that population, then we will go visit that State—if we simply did that and that triggered our visiting the State, it would lead us into a situation where we would visit some States every year and some not at all. We have decided to visit all the States every 2 years, but focus reviews on those States in critical areas and occasionally use the joint visits with the Office for Civil Rights where there are the most discrepant problems.

Mr. SIMON. You say this year you will visit 31 States?

Dr. MARTIN. Yes.

Dr. SONTAG. The information that we used in one of our compliance visits was quantitative information available to the Office of Special Education, such as child count, LRE, personnel, and priorities for service. From the Office for Civil Rights we obtained information regarding children awaiting evaluation, children awaiting placement, enrollment of minorities in special-education and special-purpose facilities.

Nonquantitative information, such as information from advocacy groups, up to now has been used in a rather episodic way. We are trying to formalize the way we pull together the information displayed here, particularly child complaints, PAR's which have been previously conducted in the States.

Dr. SONTAG. As we take a look at the child identification table displayed, I ask you to note the national average for mental retardation. The largest child count in December of 1979 was 2 percent. This particular State is serving less than 1 percent. The same percentage exists for the visually handicapped. For learning disabilities, this State is significantly below the national average. In addition, information available to us from the Office for Civil Rights indicates there are 197 children awaiting placement, and 403 awaiting evaluation. This State, by the way, is a rural State in the Midwest. Information made available to us, nonquantitative from advocacy groups, indicates preschool children are receiving inadequate services. The advocacy groups are also concerned with inadequate identification procedures in correctional facilities.

Mr. SIMON. You are very careful not to identify the State. I hope it is not the State of Illinois.

Dr. MARTIN. It is not the State of Illinois, nor the State of California.

Mr. SIMON. Do you let the public know these kinds of figures?

Dr. SONTAG. Yes; we do. This is a relatively new process. We actually used this information to build our agenda for the five staff members who spent a week in the State. We shared the information with professional groups and with staff members at the State educational agencies. We got their perception of the data. In some cases the data led us down an erroneous trail, and in fact there were no significant problems. In most cases, however, they did indicate a problem existed we should pursue.

Mr. SIMON. Is there anything wrong with just letting the public know this is South Dakota, or North Dakota, or whatever State you are talking about?

Dr. MARTIN. When we are in a State, we make it available. Some States are sensitive when we use a slide presentation and we use their name. We have used this presentation to brief the staff in the Senate and the House and different groups. If that State would say, "Why do you pick us out?"—rather than do that, we just do not identify them. But in that State, we say, "Here is your display." It is not secret, it is just a question of sensitivities, if we keep using them as an example.

Dr. SONTAG. In the future, for offcycle States, we are developing a strategy whereby we will share that data with them a year ahead of our visit. So the data itself will become a vehicle for monitoring conditions. We anticipate many reasons for the releasing of the data to the States and to advocacy groups.

Another example is the least restrictive environment, quantitative information available to us. If you look at the national rank for disability groups, you will see that this State is leading the Nation in educating children in separate facilities. In fact it is No. 1. Overall, it is eighth in the Nation in educating all special education children. This information was used for reviewing specific sites, such as local education agencies and the State school to determine the efforts that were being made to place children in less restrictive environments.

Special-purpose facilities data, the Office for Civil Rights indicated that in one particular facility of 98 residents, 91 were receiving their education in that facility. There were only seven children leaving that 24-hour environment to go outside to receive their education.

It is interesting to look at the reverse statistics regarding the EMR category. You have a facility serving 23 residents; 20 additional children go into that institution for their day program. So we have an even more significant problem here. Nonquantitative information suggests that over 100 EMR children are receiving education in one location. That city was visited; corrective action will be taken by the OSE.

Overall, orthopedically impaired children are not being served in these environments.

This data is a representation of another State. A critical area for our compliance reviews in the future is overrepresentation of minorities in special education programs. Although almost 30 percent of the school population is black, only one-third are represented in programs with children having specific learning disabilities.

It is by the use, by the generation of this critical data, that we are now able to target what used to be a general review program into a very specific compliance review program.

Out of the data we came up with two hypotheses: One, the State is not implementing a system which identifies all children in need of special education and related services; and two, the State is not providing opportunities for handicapped children to be educated with nonhandicapped children to the maximum extent possible.

Mr. **Miller**. Is is feasible to believe that you could go back in 2 years and collect comparative data to know what has happened? Are you in a position so that you can go back to the same sources to make a determination whether there has been an improvement?

Dr. **Martin**. Yes. The Office for Civil Rights forms are cyclical; second, our own information is on an annual basis. But more specifically, when we have found a problem we have begun asking the State to count very specifically aspects of this problem relevant to it. For example, in a recent visit we found a problem in an area of related services. So, as part of the solution to that problem, we have asked the State to provide information as to how many children are getting these services this year, how many new children are added, how many are on the waiting list. We have designed means to go back and show progress as well as make comparisons.

Mr. **Miller**. Are you comfortable that you have established a benchmark so that future Congresses can establish whether progress has been made?

Ms. **Brown**. We have done that through the Office for Civil Rights survey, which is a biannual survey which asks the same question on a school-by-school basis every 2 years. We are already able to look at some benchmarks in terms of pupils underserved in special education.

In 1976, our survey showed there were about 463,000 students in need of special education services not receiving them. Two years later, in 1978, the same survey showed there were nearly 87,000 pupils not being served. While 87,000 is a lot of kids not being served, it is a dramatic drop since 1976. That survey in some form or another has been conducted on a biannual basis for the last 12 or 13 years. I would hope that would continue. In fact, I think some of the court orders we work under should buttress that. But it does create a benchmark so we can go back and look at that data to see if they are implementing their programs as they said they would. For example, the disproportional number of minorities should go down.

Mr. **Simon**. Should you wait 2 years on that State?

Ms. **Brown**. No.

Dr. **Sontag**. We would hopefully not have to go back in 2 years to see if the problem is rectified. The strategy calls for delineating the problem in a letter which will describe the specific kinds of data we will ask the State to collect in the future, to make sure they are able to stop these problems from developing throughout the State.

Dr. **Martin**. Then send it to us on a periodic basis so we can judge whether the progress is being made. We can also follow them up with visits where we believe there to be a problem. But if the State will gather this information for us, we will be able to see what is happening.

Mr. **Miller**. We have State plans in various segments of education. In the nutrition program, we have State plans. Nobody can tell you what they are because nobody has a chance to read them. Given what some people may view as an aggressive form of compliance and enforcement, do we have the ability to go back in 2 years' time and get a readout on the State? Tell them, "When you came before us there was a tremendous representation of minorities.

That was one of the things we were trying to diminish." The question is, "is the data in such a form that you could come back in 6 months from now and see whether that is continuing to happen or whether progress is being made?"

Dr. **Martin**. The answer is yes. Some of the data will come on a cyclical basis. We get certain data on an annual basis which would give us a quicker feedin to see how things are shifting. But where we identify problems of this kind, we will be in touch with those States and designing specific remedies for those States.

The State plan is one vehicle we use, but what we are really talking about now is a compliance review-which——

Mr. **Miller**. What I want to know is simplistic. You gave us quantitative data as to the percentage of students represented in the educational institutions. Are we from the Office for Civil Rights data and your data going to be able to punch out the State of Nebraska and find out what those figures were in 1978, 1979, and 1980, so we can continue to monitor them? I am concerned that we have the abilities for an ongoing review.

Dr. **Martin**. The constraints are, if we do not get the manpower and dollar resources to follow these out, obviously you get a less effective system. But the things put in place, which we feel by the way are not radical, but fully within appropriate management of these programs, and fully within the law without any stretching of our responsibilities or stretching of the law, this kind of system can be in place and can represent more effective and efficient Government management.

Mr. **Simon**. The figures you had up before, when did you get that data, on the 15-percent Hispanic——

Ms. **Brown**. It came from the 1978 OCR survey.

Mr. **Simon**. What happened after you got that material in? Obviously there is disproportion of representation of Hispanic children. What happened then?

Dr. **Martin**. In that particular State that will be the focus of our activities in that State.

Mr. **Simon**. You say it will be; this was in 1978.

Dr. **Martin**. That is an illustration of the one State. We have begun a process of visiting—two States have been completed. Under this new format we will be looking for comparable data using the 101 form. We will see in that visit whether those figures are still current. We will lay out remedial actions on those things and will track those actions State by State. As we work through those States this will be a major feature of the program.

The whole system we have been going through and describing this morning provides triggering data for us. When we were talking about it a year ago, we were not using it very effectively, but we are today. It turns out to have some variations with counts that are taken differently. So what we are really using it for is to ask questions. We think it represents a true picture of what exists on those samples. We are starting on that premise and setting up corrective procedures for that.

One of the interpretive policies that we are planning to include in the notice of intent to publish policies and ask for information is procedures that Office for Civil Rights and Office of Special Education will use together on how to more effectively test and identify children. So we will be identifying districts, problems, giving the State direction on how to solve those problems and we will be developing an overall policy in this area.

Mr. SIMON. We have two concerns. My colleague from California is concerned that we are gathering the data so we can see what is really happening; I have a concern that we are gathering data and not doing anything. Here is a 1978 situation which is obviously not good, and I do not know that anything has happened. How do we see that there is movement?

Dr. MARTIN. What have we done on this classification?

Ms. BROWN. The OCR has done a number of things on this classification, although I would have to be the first to admit, not enough. Very few people send in complaints about misclassification of minorities and EMR, which is unfortunate. I think it relates many times to the poverty status of people, and oftentimes they are not aware the special program their kids are in is not serving them.

Unfortunately, the Office for Civil Rights, before it does anything else, must investigate all its complaints. That leaves very few resources to initiate our own compliance reviews.

We have been able to initiate a limited number of reviews in this area; perhaps 10 a year would be my estimate. On the other hand, we do have another vehicle, which is the Emergency School Aid Act. Every year school districts apply for money to assist in their desegregation efforts. In order to get that money, they have to affirmatively show they are not discriminating in a number of ways. We conduct onsite visits of all those applicants yearly, and find oftentimes as many as 50 or 60, I think, maybe even a hundred school districts with problems in the area of overinclusion of minorities in EMR. Those districts then have an opportunity to submit a corrective action plan which then can make them eligible for that grant. We have had literally hundreds of school districts who have come in with corrective action plans.

Mr. SIMON. We will take a 10-minute recess.

[Recess.]

Mr. SIMON. The subcommittee will resume its hearing.

We will ask you to proceed.

Dr. MARTIN. May I just summarize our answer to the last question, basically with regard to the activities in place to speak to the area of overrepresentation. First, we have the new system for selecting those districts we will visit and focus on and any issue which comes up as a result is of the overrepresentation of minority group children.

Second, we have also had a number of meetings with officials, and a number have begun to examine their own data, and are giving us back reports. It clearly will be reflected a year from now in the data Mr. Miller asked about.

Third, the three Office for Civil Rights' Office of Special Education compliance visits this year will be focused on this particular dimension in States where that is a problem.

Fourth, we have set into place a series of new technical assistance centers that will focus attention on the question of how to more effectively identify minority children.

Fifth, the discretionary program has as its major priority improvement in selecting and identifying disabled children.

Sixth, we have announced a new directed research program to identify more effective ways of identifying and placing handicapped children.

Seventh, also, we have established systems within States to demonstrate these problems and their resolutions. There are other steps which have been developed this year which will assist our ability to track progress. The first two States we visited this year happen to be States that had no large concentrations of minority children, but in the other States to be visited this year, there are large concentrations of minorities.

Dr. SONTAG. There is a new model we will be using this year for compliance reviews. I think the language we are using to describe the differences is an important distinction—previously we described our visits as program administrative reviews; now we are conducting compliance reviews; 31 will be conducted this year. In addition we have initiated a reorganization in the Office of Special Education, separating out compliance enforcement functions in the Office of Special Education into a branch where that is its major purpose and function. You might be aware that several critics of the Office of Special Education in the past had indicated we had commingled activities. We responded with this reorganization. In addition, we have assigned additional staff members to that particular branch. Travel funds for the compliance activities are the No. 1 priority in the Office of Special Education.

The new model we have for the compliance reviews consists of the process we described up to now and includes information gathering and analysis. Site selection in the past was largely accomplished by asking the States' advice primarily on where to visit. We are now doing most of the selection of sites in Washington, based on the site data, information made available to us from the professional groups, advocacy groups, and so on. We then communicate that information back to the State education office.

The onsite reviews in the past have been one of four or five individuals from our office visiting a State for 5 days. As we move into completing the 31 visits scheduled this year, it is quite possible that in the next 2 or 3 months we will have a model which will have two or three staff members visiting a State for 2 or 3 days on a particular issue. We are going to take the information and the analysis to build the agenda not only for the site selection but for the kinds of questions we are going to ask and for predicting the amount of energy we will use in conducting the review.

Another change in our compliance review from previous procedures is the omission of an informal debriefing with the State education officer. We felt we have had to gather our information and our data too quickly from site team members and, in many cases, we were sharing conclusions that were not substantiated by data information or did not show some major problems. We will try to put that information into a letter and get that back to the chief State school officer within 2 or 3 weeks after our visit to the State.

Lastly, we will ask for voluntary compliance. If they do not work we will move into enforcement strategies which are now available to us.

The Department feels the report, the Memorandum of Understanding has been a major undertaking, and in fact we feel it would have been very difficult to achieve unless the Department of Education had not been created. The creation of the Department has clearly enabled us to do this.

One of the things that is not said in either the report or the Memorandum of Understanding, something Ed alluded to in his opening remarks, is that the burden on coordination for complaints, policy interpretation, and technical assistance, is now less on parents of handicapped children, less on consumers, and more on the Federal Government. Parents of children will have to shop less for interpretations on how to file complaints. That burden is now up to us to fully implement this working document.

Thank you.

Mr. SIMON. Thank you.

Mr. Erdahl.

Mr. ERDAHL. Thank you very much.

I regret I was not here for the first part of the presentation, but I will review that. A question arises, which I am reluctant as the minority member to bring up. I supported the new Department, but what if there are moves ahead to abolish the new Department?

Dr. MARTIN. At the risk of seeming partisan, I hope that will not happen. We said in a number of ways this new Department has made education for the handicapped more effective. First of all, our very existence facilitates communication which expresses itself in many ways. For instance, when I go to speak now, I find people from both offices come to those meetings, as opposed to what used to be separate meetings. In this area, which is most critical to us, we would have had a very complicated system of communication involving going from one Department to another. While we have never had bad relationships with the Office for Civil Rights, we just have not had the vehicle for the day-by-day collaboration that we have had. The development of the task force which Cindy and I head has involved all the major components of the agency, the General Counsel, Office of Management and Planning, the Secretary's office, her Special Assistant, so I find the new Department, frankly, to be very, very much more manageable than HEW was. HEW was so colossally large that for us to have brought a given problem to the Secretary's attention would have been very, very difficult. Now it is something where there is much personal deliberation on issues of concern to disabled Americans.

Mr. ERDAHL. I want to commend you, Mr. Chairman, for the hearings in this area.

Dr. Sontag, there is a hearing in another subcommittee on the lack of compliance under title I. But the question that comes to mind, what are the penalties you can invoke for lack of compliance if the funds have been disbursed? What kind of penalty, if that is the right word, or what kind of adjustment can be made that does not end up penalizing the children?

Dr. SONTAG. There are several enforcement strategies available to us that we have not used up until now. The only enforcement strategy the Government has used has been voluntary compliance and an approval process of the State plan.

We have the option of withholding funds from a particular State if a significant compliance problem exists. We have the option of cease and desist, recovery of funds. If there is an auditing exception, we have the option of referring specific action to the Department of Justice. We have the option of enforcement proceedings under the Office for Civil Rights regarding section 504.

Mr. **Erdahl**. In other words you are saying you have enough options to cause voluntary compliance. So you do not see that as a problem?

Dr. **Martin**. We have a couple of tools that we think will be helpful. Obviously the major threat of cutoff of funds has a two-edged sword. It cuts against the children benefiting in the program, so it is not an option one rushes to, although it has to be an important part of the total resources that are available. We think by more systematically setting the objectives for States and tracking those, we can have a more effective compliance program.

Mr. **Erdahl**. Rather than coming in as an audit after the fact?

Dr. **Martin**. Yes. We have gotten many, many assurances from States that they would correct problems, but some have not been corrected, and time has dragged on too long before the ultimate resolution of those problems. I think just the fact the Office for Civil Rights and ourselves will work cooperatively on a problem, the States will know it is not a question of dealing with the Office of Special Education exclusively. Anything we do subsequently in enforcement with Office for Civil Rights will be under time lines, et cetera.

As to selective cutoff of funds, in discussing it with the General Counsel we find we may be able to cut off administrative funds to a State without cutting off child service funds. We would hope we would not have to do that, but it is better than having to cut off the whole head of the beast.

The cease-and-desist orders will carry more weight. Our feeling is that very few responsible public governments would want to ignore us in a particular area, and that would be helpful and certainly set the stage for Justice Department action if it was unsuccessful.

Mr. **Erdahl**. Thank you, Dr. Martin.

Thank you, Mr. Chairman.

Mr. **Simon**. I have no further questions. I am pleased with the cooperation and coordination that is taking place. My hope is that we can pursue compliance vigorously and follow through in the areas you've mentioned, such as in the one State where we saw the disproportionate number of minorities in classes for the mentally retarded. We need to follow through and get these areas corrected.

Dr. **Martin**. I want to thank you and Mr. Erdahl on behalf of all of us for your efforts. Our statement focused on the new Memorandum of Understanding and the Secretary's task force. I did want to take 1 minute to tell you that in my opinion as a professional now working 25 years with children with disabilities and adults, I think the act is a marvelous step forward for the American people. I think it has made a difference in lives. Literally there are thousands of children enrolled in programs who would not have been had you not passed this legislation. We have problems in implementation, and I think we must make and have made steps to cut those down. Our frustration level is high, because we have an expectation level of 100 percent. I am very, very hopeful that the program will continue in its basic intent to provide equal education opportunity for all children, and I think we will achieve that goal. I happen to be optimistic. Notwithstanding problems of finances that plague school districts across the country, it seems the basic good will is there to implement education for these children.

Thank you again, and we look forward to continuing to work with you.

Mr. SIMON. Thank you very much.

Our next panel is made up of Cory Moore, information and education coordinator, Montgomery County Association for Retarded Citizens; Boyd Ladd, president, Parents' Campaign for Handicapped Children and Youth, Washington, D.C.; Paula Goldberg, co-director, PACER Center, Inc., Minneapolis, Minn.; and Martha Ziegler, director, Parent Information Center, Federation for Children with Special Needs, Boston, Mass.

STATEMENTS OF CORY MOORE, INFORMATION AND EDUCATION COORDINATOR, MONTGOMERY COUNTY ASSOCIATION FOR RETARDED CITIZENS; BOYD LADD, PRESIDENT, PARENTS' CAMPAIGN FOR HANDICAPPED CHILDREN AND YOUTH, WASHINGTON, D.C.; PAULA GOLDBERG, CO-DIRECTOR, PACER CENTER, INC., MINNEAPOLIS, MINN.; AND MARTHA ZIEGLER, DIRECTOR, PARENT INFORMATION CENTER, FEDERATION FOR CHILDREN WITH SPECIAL NEEDS, BOSTON, MASS.

STATEMENT OF CORY MOORE, INFORMATION AND EDUCATION COORDINATOR, MONTGOMERY COUNTY ASSOCIATION FOR RETARDED CITIZENS

Ms. MOORE. My name is Cory Moore. I am the parent of a teenager who is both physically and mentally handicapped; she attends a segregated public school for moderately retarded children, aged 5 to 21, in Montgomery County, Md. My daughter has had a considerable influence on my professional life and my interests. I serve on the staff of the Montgomery County Association for Retarded Citizens, where I am the parent information and education coordinator. My volunteer activities include membership on the Montgomery County School Superintendent's Advisory Committee on the Handicapped, and the Advisory Committee to the Supervisor of Continuum Education.

I am honored to be here today. This committee's oversight hearings have made an invaluable contribution to the education of handicapped children.

I was delighted to read the final report to the Secretary of the Task Force on Equal Educational Opportunity for Handicapped Children. Earlier documents, such as the report by the Education Advocates Coalition, have demonstrated that effective implementation in the educational sphere of Public Law 94-142 and section 504 of the Rehabilitation Act of 1973 required the Department of Education to organize and prioritize its activities more systematically than it has in the past. The final report is certainly an important step in that direction. As a parent, I am excited and pleased about the final report; the services handicapped children receive in years to come depend in no small part on the success of the effort to give focus and direction to the Department's activities.

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As a parent, I profess no expertise in organization and management and will not speak to the final report in that light. My contact with the implementation of these laws is with my own LEA, not with the Department of Education. Perhaps the most useful contribution I can make is to identify some priority problem areas which appear, from my vantage point as a parent in one school system, to be of particular importance, and then to discuss with you the fashion in which the final report treats these problem areas. I will focus on three problem areas, areas that affect large numbers of children and areas I deem to be of very great importance.

First, the two Federal laws both mandate placement in the least restrictive environment. Certainly what this intends is as little segregation of handicapped children as possible, consistent with their educational needs. In my experience, however, the integration of handicapped children into regular classrooms is often a pretty haphazard affair and, more frequently than not, regular classroom teachers who deal with mainstreamed handicapped children not receiving the help they need to teach confidently and effectively. The child with a handicap, his nonhandicapped peers, and the teacher all suffer as a result.

Second, while it is generally understood that "least restrictive environment" means mainstreaming in some cases, parents and school personnel are quite uncertain as to just what it means in real-life situations. Under what circumstances is mainstreaming essential? For which children? With what supports? When mainstreaming is not required during either part or all of the school day, what is meant by the "least restrictive environment" requirement? In the absence of policy guidance and developed compliance strategies from the Department of Education, State and local systems are pretty much free to do as they please. Sometimes their choices are sound. Sometimes they are not.

Third, the obligation to identify and provide "related services" which a particular child needs has given rise to a host of compliance, and some policy-development, issues affecting large numbers of children. In segregated settings, appropriate related services sometimes are provided as a matter of routine, although that is often not true. When services come with only one setting, placement constraints are often exercised. As greater numbers of handicapped children are mainstreamed, more and more difficulties are encountered by parents in their efforts to see that school systems recognize the needs of their children for such services in the least restrictive environment and that school systems provide the services needed.

Keeping these three particular problem areas in mind, I should like to return to the final report and offer some suggestions: The first problem area I mentioned—the need for adequate support for both teacher and child in mainstreaming situations—is a crucial one. The mechanisms for insuring that meaningful support is provided when necessary lie close to the heart of the law, for without them the least-restrictive-environment requirement will not succeed. This seems an area clearly appropriate for technical assistance as well as policy development. Appendix A-IV describes some activities in this area; Appendix F, page 8, mentions a contract to train State and local education agency officials in the administrative strategies necessary to educate handicapped children in the least restrictive environment. Much more needs to be done in helping teachers—those in the front line—understand and accommodate individual handicapped children. LEAs must be helped to offer teachers practical support in the day-to-day situations that arise. Workable implementation strategies must be developed. Questions need answering: Does each LEA have a strategy to meet this critical need? What is it? What has worked elsewhere? What kinds of in-service training and case management are useful? What kinds are feasible?

The second problem area I mentioned is the matter of giving content to the least-restrictive-environment requirement. Here policy development is necessary and vital. LEAs, SEAs, and the Department of Education must have clear definitions. The requirement cannot be enforced unless what it means is understood. Yet "least restrictive environment" remains on the list of "to be addressed" issues discussed on page 20 of the final report. I would urge OSE and OCR to view this as a priority issue.

The third problem area I mentioned is the gray and murky one of "related services." All too frequently IEP's list "related services" according to what is available, not what the child needs. This is a data collection/enforcement/compliance strategy problem that is touched on by subsection D under Priority Compliance Issue VII (IEP's) and subsection C under Priority Compliance Issue IX (related services). But I see little in the final report to indicate whether or not anyone has figured out how to "get a handle" on this possibly elusive but certainly important compliance problem.

These, then, are particular omissions, from my vantage point. I raise them not to criticize but because they suggest to me that before I, as a parent, see progress in these particular problem areas, more will need to be done for this "final report" to be truly "final." I offer these thoughts:

First, perhaps in the technical-assistance area, the Department should develop a much narrower list of particularly high-priority subjects for technical assistance and concentrate most of its expenditures on those subjects. I say this with diffidence; I am certainly not qualified to undertake a careful and detailed analysis of all the technical assistance activities cited in appendix F. I am certain, however, that children in large numbers suffer from inadequate support for regular classroom teachers of mainstreamed handicapped children, a matter which strikes me as a priority item for technical assistance.

Second, the recent progress in developing policy with respect to certain key policy areas is gratifying, but obviously, as the final report recognizes, others remain to be addressed. It would seem to be useful—both for the public, in providing helpful input, and for the Department, in directing its activities in this area and in evaluating its own performance—to publish and periodically update a "policy development agenda," listing and prioritizing subjects for policy development, with a clearly defined expected timetable. Policy guidance with respect to the least-restrictive-environment requirement is desperately needed. Great numbers of children are affected. Yet because of the intrinsic difficulty of the subject it is a prime candidate for repeated deferral. Publication of an agenda of the kind I suggest might well be useful for just this kind of problem.

Third, the final report shows awareness for the need to develop data-gathering procedures and other compliance techniques that will permit the Department to identify school systems with compliance problems that lurk beneath the surface of seemingly adequate paper implementation plans, and to take appropriate steps to help resolve those problems, as Mr. Stutman indicated. Appendix E to the report—the appendix on data collection—shows, however, that the kind of data needed to identify these situations is not now available with respect to a great number of "priority compliance" sub-issues; the related-services issue I spoke of is just one of these. It would seem to me, therefore, that ranking the 69 "priority compliance" sub-issues by priority for the development of particular data gathering/compliance strategies, with appropriate timetables, would be useful.

In conclusion, I should like to say that I found the final report an impressive document. It illustrates that the Department is organizing its activities to produce what I as a parent want—appropriate services for all handicapped children. It provides a focus and a framework for what needs to be done—gaps that exist in data collection, enforcement activities, policy development, and technical assistance. It signals the end of uncoordinated activity by OSE and OCR. These are enormous steps forward. It should make what happens next easier and far more effective.

Mr. **Erdahl** [presiding]. Thank you very much.

I think what we will do is proceed with other members of the panel before we have questions.

Mr. Simon is over on the floor making a speech. He will be back as soon as he can.

Boyd Ladd, president, Parents' Campaign for Handicapped Children and Youth.

You may proceed in the way most comfortable to you.

STATEMENT OF BOYD LADD, PRESIDENT, PARENTS' CAMPAIGN FOR HANDICAPPED CHILDREN AND YOUTH, WASHINGTON, D.C.

Mr. **Ladd**. Thank you, Mr. Erdahl.

On behalf of the Parents' Campaign for Handicapped Children and Youth, I deeply appreciate this opportunity to bring you our perspective on issues addressed by the Secretary's Task Force on Equal Educational Opportunity for Handicapped Children.

I am chairman of the board of the Parents' Campaign. That board is composed of men and women who know problems of the disabled by personal experience: Each member is the parent of a handicapped child, or is himself or herself disabled. In addition, several board members are now or have in the past been professionally involved in parent counseling, research, writing, or legal services in connection with education of the handicapped. In my case, my first son was a Down's syndrome child, so that I became involved in the field as a young man. One of my stepdaughters, diagnosed as schizophrenic, has since 1967 ridden the roller coaster of hospitalization, slow and painful recovery, a period of tentative self-reliance, mounting anxiety, rehospitalization. We may never know what potential is trapped within her, unrealized; we have seen glimpses of some artistic and musical talent, and of an uncommon sensitivity. My professional career has been in education and statistics. I now practice as a consulting statistician, especially in education, library, publishing, and broadcasting statistics. During 1968–75, I served as assistant director of the National Center for Education Statistics.

My remarks describe the Parents' Campaign and its program, and address the three major aspects of the report on which you requested comment. I conclude with views and suggestions on some broader public management issues and opportunities.

The Parents' Campaign for Handicapped Children and Youth is a national not-for-profit corporation formed to assist in removing barriers which needlessly limit the rights and opportunities of handicapped individuals. Our concern extends to all categories of disability. The particular focus of our organization is on strengthening the capabilities of parents of the disabled, and of disabled young people, to increase the self-reliance of the disabled through accessing appropriate educational and training opportunities. We undertake research, and we conduct very practical kinds of training, typically in a workshop format. We provide counseling and information in response to specific queries and pleas for help on behalf of individual handicapped children or young people. We cooperate with other advocates such as local parent groups or national groups concerned with a specific disability, and with professionals in special education and rehabilitation.

Parents' Campaign conducts three programs at this time and is now concluding a program of training parent advocates, under sponsorship of OCR and OSE, in the rights of disabled young people with respect to vocational education under section 504 of the Rehabilitation Act and under the Education for All Handicapped Children Act. Parent-advocates are helped to learn how to work with their educational systems to secure appropriate vocational education opportunities. In each location, participants in the parent advocacy training have since initiated new activities, tailored to their local situations. Since September 1978, about 880 parents and others have completed advocacy training in 29 workshops in 17 States.

Parents' Campaign also conducts Project Closer Look, the national center for information for handicapped individuals, funded by the Office of Special Education. This activity involves identifying needs for particular kinds of information, carrying out the necessary research to develop authentic information, and writing materials which are understandable by lay parents without specialized backgrounds. The materials are disseminated directly in response to inquiries, and increasingly through a developing network of local and national organizations.

Parents' Campaign publishes a quarterly newsletter, "Report From Closer Look," which provides parents and professionals news on current program information and on recent findings from research, education, and treatment activities. The "Closer Look Network News" is also published quarterly, with information of particular interest to organizations—exchange of experience, national developments, et cetera.

Parents' Campaign also participates with the American Council on Education in an information service on handicapped students/ potential students and postsecondary education. This service, both to institutions and to consumers, is intended to facilitate effective postsecondary educational experience for the disabled.

We applaud heartily the resolution to expedite policy development and the plan to do so in a coordinated way with respect to unresolved issues and to new issues which may be identified. Recognizing that the change in administration will call for review of this new machinery, we hope that effective and efficient processes of policy decision and enunciation can be affirmed promptly, in the interest of all those affected.

With respect to issue identification, we urge the potential value of information from consumers—that is, from parents and from disabled young people. Many consumers, overwhelmed by a particular problem threatening a loved one, never think of filing a formal complaint about difficulties they encounter. Some of them in writing Closer Look for advice or information explain problems they have met. A systematic screening of parent organizations' and disability organizations' experience could be very useful in bringing to light issues of inconsistent interpretation and administration of the act.

In order to give opportunity for parent organization comments, we recommend that the option: "either OCR or OSE may determine that a notice of intent to develop policy shall be prepared for publication in the Federal Register"—from VB1 of Memorandum of Understanding, should be exercised almost always—except if unusual reasons exist to the contrary. We believe that informed comment from consumers likely to be affected directly by new policy can be very constructive in developing practical and realistic policy. Parents' Campaign would be pleased to help solicit useful suggestions for the Department by appropriate notes in "Network News" and/or in "Report From Closer Look."

We regard it as valuable to disseminate policy interpretations as soon as determinations can be responsibly formulated, in order to minimize needlessly—unguided discretion by local officials. Timely disseminations may preclude inconsistent rulings and consequent feelings of discrimination on the part of those affected by the less favorable interpretations. This is not to deny that variations in regional conditions may appropriately justify delegated discretion in some features, though we urge caution against possible inequities in effects.

Parents have strong interest in monitoring and enforcement. We want all the handicapped to receive the educational services guaranteed by the law. We want compliance by school staffs who want to serve our children, who have been given incentives and training and other help to do so.

We support as sound public administration practice the several steps outlined by the task force toward more effective planning for data collection, sharing of data between the agencies, development of criteria to trigger compliance investigations, development of a data analysis plan, and publication of appropriate summative statistics in the annual condition of education report to Congress. The processes outlined seem promising; we urge systematic tracking of progress on these steps which are not exciting in themselves, but are instrumental to effective management.

The assessment of data needs for dealing with priority compliance issues—appendix E—is striking for the large number of subissues, and 4 major issues—of 14—on which data are not now available. In respect to many of these, leads might be identified, if useful for exploratory investigation, from parent inquiries to Project Closer Look and to other organizations, protecting the confidentiality of the parent's identity. These leads would not in themselves provide hard evidence, of course. We will be glad, if desired by the committee or by the Department, to test this possibility by screening cases for a short time interval to extract information suggesting one or more of the 69 subissues as classified by appendix E. Such a test would enable compliance officials of the Department to judge whether such information would justify the effort that would be required to do such screening on a continuing basis.

Philosophically, we recommend a strong emphasis on negotiations with and technical assistance to local education agencies found to be in apparent noncompliance, prior to the use of the available sanctions. To some extent, the data needed to trigger exploratory inquiries with a view to such measures may be softer than the kinds of data needed for compliance investigations contemplating sanctions.

Compliance teams planning spot-check visits may wish to identify strong parent groups in the areas to be visited. Such information is available through our parent network files.

Parents who write to us and who participate in advocacy workshops often report needs for technical assistance to enable the school to meet the promises of the law. They see, too, great need for parents to learn to work with the schools in planning programs.

We concur in the task force's emphasis on effective, targeted technical assistance as especially important to effective administration of section 504 of the Rehabilitation Act and Public Law 94-142. This derives from our view that noncompliance, where it occurs, is occasioned more by problems of understanding and of resource shortages than by defiance or deliberate evasion.

We commend the planned early assessment of technical assistance needs, and urge that the subcommittee on a bipartisan basis endorse pursuit of this needed task and encourage the Department to secure participation by the appropriate transition team with a view to serving needs perceived by the new administration.

We are concerned that the administration of these laws be effective and cooperative, demonstrating our capacities for negotiating reasonable agreements within the framework of law, rather than litigating forced decisions which are costly in time and expense and good will and in the life disruption of children caught in uncertain outcomes. To these ends, we regard it as important that technical assistance be available to the many participants in carrying out these laws.

Training of parents in the law, in the elements of the IEP process, in the special significance of vocational education for handicapped young people, in the arts of negotiating and joint planning with school officials, all are important technical-assistance needs. This knowledge and skill will help to enlist the consumers as effective team members in carrying out these laws. As parents become more sophisticated, they become an important resource to the school, and to OSE and OCR, in improving the performance of the total system.

In summary, the Task Force on Equal Educational Opportunity for Handicapped Children has addressed problems of great importance. I believe resolution of these problems to be crucial to achieving the commonly accepted goals of these acts, which express our responsible humanity as a people. The report provides an important plan for moving forward.

The capabilities of the handicapped constitute a large human resource which we are not yet adequately developing and utilizing. The two acts addressed by the task force report provide the legislative charter for learning to do so more effectively, with the aid of further research in special education and rehabilitation. These acts call for substantial adaptations in schools and other institutions. Mainstreaming and requirements for least restrictive environment mean learning new patterns of professional practice by teachers and administrators. IEP provisions pose new opportunities and responsibilities for active participation in their children's education by parents of handicapped children. These are not small changes, so it is not surprising that there are delays and problems and honest differences of judgment and interpretation as well as resistance from some.

These large changes are worthwhile, economically as well as in human terms. Measured in dollars, special education and vocational education for the handicapped are a good investment. A review of the available evidence on return on investment for these activities was published in "Report from Closer Look," fall 1980. The review, entitled "Dollars for Independence," draws on research published from 1971-80. Among the findings cited are that the excess cost for 12 years of elementary-secondary school for a visually impaired child, estimated at about $28,500, would be repaid by taxes alone on the graduate's income at minimum-wage level in 25.5 years; and that the taxes paid plus savings in income-maintenance expenditures over a 40-year period would be $61,100 more than the $28,500 expended. From a national income standpoint—rather than return to the Government—the contrast would be even greater, of course. Vocational education and training programs typically yield even higher benefits-to-costs returns. The article is attached for convenience in reference. I wish to sound a caution. The available analyses have necessarily relied on special studies for excess-costs estimates, in the absence of regularly collected data generated nationally by standardized accounting procedures and uniform definitions. The benefits have been estimated on hypothetical cases, using assumptions believed to be conservative. There is in my opinion need for substantial statistical development and economic research to improve the tools for decisionmaking, for example among options for education of the handicapped, as new methods are developed using new technologies. However, by the best findings now available, special education and vocational training and rehabilitation are very good investments.

Finally, I wish to express special thanks to the subcommittee for your commitment to hearing from parents as an integral part of these oversight hearings.

[Material submitted by Boyd Ladd follows:]

REPORT from

CLOSER LOOK

A Project of the Parents' Campaign for
Handicapped Children and Youth

Box 1492 Fall 1980 Washington, D.C. 20013

Consumers Join Rehabilitation On Learning Disabilities Task Force

Long-standing questions about vocational rehabilitation services for learning disabled youth and adults are now being addressed by a task force put together by the Rehabilitation Services Administration. An active attempt to resolve controversial issues is underway, although there will be a continuing need for research into rehabilitation needs of this population. Two major problems need to be dealt with: lack of adequate data about diagnosis and remediation, and a definition that can fit within the legal mandates under which RSA governs the operation of state and local vocational rehabilitation agencies. The law (Public Law 95-602) states that in order to be served by vocational rehabilitation, a person must demonstrate:

- a physical or mental handicap;
- a significant impediment to employment caused by the handicap;
- the ability to benefit from the services of vocational rehabilitation.

Barriers to eligibility prevent service

Now that a generation of adults with severe learning disabilities has become aware that their problems stem from a genuine—but remediable—handicap, they are turning to vocational rehabilitation, only to find in many cases that they are not considered handicapped. A disability that was enough to justify special education services (or cause them to drop out of school) is not enough to make them eligible for vocational rehabilitation services.

Often the person who seeks vocational rehabilitation may already have bitter experience of having been rejected for employment, or fired after a short while. Employers are not necessarily quick to understand why they should hire someone who cannot fill out an application—or why they should keep someone whose training takes extra effort, time and understanding. It is much easier for an employer who is not familiar with learning disabilities to ascribe the problems to laziness, indifference, or lack of ability.

Rehabilitation counselors must deal with the other side of the coin: It is often evident from the record that there is a real obstacle to employment of a learning disabled person,

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Dollars for Independence

Newspapers and magazines are filled with articles commenting on the high cost of programs for people with disabilities. Double digit inflation and the declining value of the dollar have made everyone, from legislators to the average citizen, call for a tightening of the purse strings. However, cries of "You're spending too much money. Cut back!" run the risk of being penny-wise and pound-foolish.

Money spent on special education and rehabilitation programs decreases dependency and increases self-sufficiency. These dollars for independence transform the enormous potential of people with disabilities into productivity. Just as important as the monetary benefits to the economy in the form of taxes and avoidance of institutional costs is the self-esteem that results when a person becomes an integrated member of the community, contributing talents and skills as well as tax dollars. In financial terms alone, however, society cannot afford to overlook this untapped resource.

Barriers to Independence

The nation's failure to invest in the potential of disabled citizens is cited as a major cause of inflation and a central factor in the country's poverty problem by Dr. Frank Bowe, Director of the American Coalition of Citizens with Disabilities. In his recent book, "Rehabilitating America," he points out that one out of every thirteen dollars in the federal budget is spent on benefits for disabled people dependent on government aid, such as income-maintenance, medical support and related services. This is, he says, one of the largest contributions to the increase in federal spending.

Disability-related benefits provide important and necessary services for people with handicapping conditions so severe that they cannot live independently. However, many disabled people who can participate in the workforce are prevented from becoming independent tax paying citizens by lack of education and appropriate training programs, inaccessible public transportation, nonwork-related job requirements and work disincentives.

Education—a sound investment

Education in general can be viewed as an investment. In recent years, considerable research in the field of economic theory has focused on the links that exist between edu-

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Did Our Information Help You? Consumers Say "Yes"

This year, Closer Look celebrates its tenth year of providing parents, professionals and advocates with information about services for handicapped children. During those years the movement supporting rights and opportunities for disabled people of all ages has grown and changed enormously. State and federal laws have guaranteed services and rights that were just a dream when we began. We have worked hard to keep up with these developments and to make them known to as many people as we could reach.

Our responses to the people who write to us have grown and changed, too. Our basic goal has always been to find answers to the questions we are asked. Some of them are obvious needs and can be anticipated. Some are not so obvious—but we usually find that many individuals share the same need and can benefit from the same kind of information.

We have had much informal feedback from parents and professionals praising the quality and scope of our work. However, it was time, we felt, to seek a more formal assessment of whether consumers were gaining substantial benefits from writing to Closer Look.

People learned, shared new knowledge with others

With this in mind, we asked for specific reactions to our materials and packets. We asked for consumer feedback on whether they discovered new information through our response and what they learned about. We asked them to tell us what they found useful. We asked them to rate the amount and difficulty of the materials they received. We asked whether (and with whom) the information was shared, whether (and to whom) they would recommend Closer Look materials. Most crucial, we asked whether the information had helped them get services for a disabled child or adult.

The response has overwhelmed us! So many people added success stories, expressed their thanks, and told us how much they had learned—and how they had been encouraged to keep on working for better services. We want to share the comments and responses with our readers.

A sampling of comments:

- *The information answered my questions; I enrolled my child in an infant stimulation program.*
- *I contacted the local parent group, and they helped me formulate an IEP for my child.*
- *The information on educational rights made me a more effective advocate for my child.*
- *We called several agencies and groups and have received invaluable aid and advice.*
- *As an educator, I was curious about the information. I found it to be most helpful, and I will continue to share it with parents.*
- *I am very interested in art therapy for my child. I now know where to write for more information.*
- *You helped to elevate the level of education of my child.*

A summary of results:

Did you learn new information from the packet sent to you?

Yes:	94 %
No:	2.99%
N/A:	2.99%

If so, what did you learn about?

Parent Groups:	34.13%
Advocacy Resources:	43.70%
State Agencies:	38.92%
Handicapping Conditions:	25.15%
Educational Rights:	61.68%
Vocational Education and Employment:	19.76%
Housing or Accessibility:	10.78%
Recreation:	9.58%
Other:	10.78%

Did the information help you get services for a handicapped child or young person?

Yes:	36.53%
No:	47.9 %
N/A:	15.57%

Did you share the information with anyone?

Yes:	81.44%
No:	13.77%
N/A:	4.79%

If so, who else saw it?

A parent of a handicapped child:	47.30%
Educator:	82.1 %
A doctor or other medical worker:	11.98%
Counselor, psychologist, social worker:	25.75%
A disabled adult:	10.18%

There was:

too much material:	2.99%
not enough:	16.17%
about right:	73.66%
N/A:	7.18%

I would recommend Closer Look's information to others.

Yes:	96.41%
No:	1.8 %
N/A:	1.8 %
To parents:	88.02%
To educators:	79.04%
To medical personnel:	70.66%
To disabled adults:	58.1 %

Dollars for Independence

(continued from page 1)

cation, productivity and income. Economist Gary S. Becker in his book "Human Capital" notes that highly educated and skilled persons tend to earn more than others. He goes on to point out that unemployment is strongly related to the lack of education. This may sound like plain common sense—and it is. Job skills command dollars in the marketplace.

The Education for All Handicapped Children Act of 1975 (Public Law 94-142) established the right of all American youngsters to an education. Its primary goal is to give every child, including the most severely handicapped, the learning opportunities needed to become as self-sufficient and independent as possible. Is there a way of showing that dollars spent on excess costs of special education programs are paid back to the government through income taxes and other channels? Research studies done during the last decade provide the basis for making such a projection.

Dollars make sense in special education

In a study done in 1970, Rossmiller, Hale and Frohreich surveyed 24 school districts in five states and found that the cost of special education programs ranged from 1.18 times to 3.64 times the cost of education of the so-called normal child, depending on the disability category. The average cost of special education was approximately twice that of regular education. David Braddock in his article "Dollars and Sense in Special Education" used Rossmiller's formulas for 10 disability categories as a basis for demonstrating that expenditures for the education of handicapped children produce a substantially positive return on investment. To demonstrate long-term savings, Braddock used the concept of the educational payback period—the amount of time necessary for an educational program to pay back its cost.

For example, Rossmiller estimated that it costs 2.97 times the cost of regular education to educate a visually impaired child. If the cost for regular education is $1,207, it would cost 2.97 times as much or $3,585. The excess cost would be $2,378 or the difference between the two. For a 12 year education program, the excess cost would be $28,536.

Research points to long-term saving

Taxes were calculated on a salary based on the federal minimum wage ($2.30 at the time of the study), and amounted to $1,121 for one year or $44,840 over 40 years, the average worklife of a person. By dividing the excess cost for 12 years ($28,536) by the taxes paid in one year ($1,121) a payback period of 25.5 years was determined. By subtracting the total excess cost ($28,536) from the taxes paid over a 40 year period by a visually handicapped person who had received an education through 12th grade ($44,840), a long-term saving of $16,304 was received by the community. If the estimated saving to the community in income-maintenance payments were added to this figure, there would be a total saving of $81,144. Thus, by spending more on a handicapped person's education, the community profits by $81,144 over the span of his or her working life.

In this study, the payback period for a speech impaired child was 2.3 years with a total long-term saving of $87,075, for a mildly retarded student it was 11.2 years, and when a mildly retarded child was taught academic and work skills instead of being placed in a custodial institution (a not infrequent event), a total long-term saving of $441,289 resulted. The average payback period in this study was found to be 25 years.

This analysis is hypothetical—it is based on a certain set of assumptions. Results will be different if any of the assumptions change: for example, if the visually impaired person earns more (or less) than the minimum wage, it will take a shorter (or longer) period of time to pay back the cost. However, it should be remembered that a person with a handicap will not necessarily have difficulty earning a living; many disabled but capable people will contribute in tax dollars well in excess of their individual education costs.

In any event, for all nonsevere disability categories in Braddock's analysis, projected taxes paid directly to the government, as well as indirectly through income-maintenance avoidance, exceeded the *total* cost of a 12 year education experience.

Early opportunities for development lead to success

Similar results have been demonstrated in other studies. Ronald W. Conley, author of "The Economics of Mental Retardation," reports that the lifetime earnings of mildly retarded adults are six times that of the cost of their education. He concludes that, *"Educational services to the mildly retarded can be justified on the basis of earnings alone. It is, in fact, self-defeating not to provide these services, since this would sacrifice a large long-run gain for a small short-run gain."*

The success of retarded people in employment is dependent on their having the opportunity for intellectual and social development in childhood and supportive services as adults. Evidence shows that there are very few intellectually handicapped individuals who do not have potential for gainful employment, and those who cannot actually join the labor force are usually capable of learning self-care skills which can help them to become better integrated into family life.

High quality education is good economics

There is no way to put a dollar value on the elimination of loneliness and futility by making it possible for a person to become a productive, social human being. But, it is becoming increasingly important to demonstrate the sound economics of spending public money for opening equal opportunities for handicapped individuals. The numbers point to a substantial dollar return on the investment in education of children with disabilities. How to do this most effectively is becoming an important topic for research.

A paper presented by Dorinda D. DeWitt and Wade C. Wisters to the World Conference on Future Special Education in 1978 reports on gains in achievement as well as cost savings in the comparison of two special education

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Dollars for Independence
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models—resource rooms and self-contained classes—in South Carolina. The high and low educable mentally handicapped students enrolled in the resource room program performed better on post-tests in reading, arithmetic, and spelling than their counterparts in the self-contained programs. In addition to producing higher achievement gains, the resource room program was less expensive to operate.

Interesting as it is, we should be cautious about leaping to conclusions based on this study. Comparisons must be restricted to populations and special education settings that are actually similar. We must always be vigilant about maintaining high standards—not seeking "bargain basement" savings at the sacrifice of meeting appropriate needs. What seems to be showing up as a fact is that quality and appropriateness in education *do* add up to good economics. The study does point to an important area for additional research in order to achieve the goal of high quality and cost effective education for children with special needs.

Vocational education—key to jobs

Dr. Daniel Taylor, Assistant Secretary for Vocational and Adult Education, recently commented, "Vocational educational programs are an important key for linking handicapped youngsters with occupational opportunities." Vocational education *can* be the means to an important end — a paying job. Unfortunately, handicapped youngsters are generally excluded from the regular public school vocational education programs and are limited to segregated classes offering few career choices. Lack of training can lead to lack of opportunity and unemployment.

A report to the Congress in 1976, prepared by the General Accounting Office, estimated that with vocational education, 75 percent of physically disabled and 90 percent of mentally retarded students are capable of working either in competitive employment or in sheltered workshops. However, of the more than 16 million individuals served by vocational education in 1976, only 2.1 percent were handicapped. The limited career opportunities that result from lack of training keep young people with disabilities unemployed or underemployed.

Employers prefer vocational graduates

According to the American Vocational Association, there is considerable evidence that vocational graduates have an advantage in the labor market over nonvocational graduates. A national survey of 23,000 students who graduated in 1972 reported that vocational graduates generally required less time to find their first job and earned more than other students. In 1976 the youth unemployment rate for high school students who completed vocational education programs was 13.5 percent as opposed to the 19.9 percent national rate for all 16 to 19 year olds. A 1976 survey of employers in Ohio indicated that 76 percent expressed a hiring preference for graduates with vocational education.

There is no question that handicapped students who have not chosen to attend college need vocational education and can benefit from it. It can be a deciding factor in landing that first job—and making it up the ladder to financial self-sufficiency.

Rehabilitation and training programs—transition to work

For over 60 years, vocational rehabilitation, a federal-state program, has been providing a wide variety of services to people with mental and physical disabilities to enable them to participate in gainful activity. As a result, many handicapped individuals have achieved a high degree of economic self-sufficiency, and the program has also proved to be cost effective. A 1980 report from the Rehabilitation Services Administration shows a long-term benefit of approximately $11 for each dollar invested in the cost of rehabilitation since 1975.

Innovative training programs are succeeding in placing people with severe disabilities in paying jobs. "Job Development and Enhanced Productivity for Severely Disabled Persons" is the title of a three and one-half year project conducted by the Job Development Laboratory at The George Washington University. Funded in part by a grant from the Rehabilitation Services Administration, the project trained and placed 79 severely disabled persons in 32 different information handling jobs. Many of the individuals placed were formerly considered unemployable by their state vocational rehabilitation agencies. Disabilities included spinal cord injury, cerebral palsy, muscular dystrophy and stroke. A follow-up study of 25 percent of the group indicated a $7 return to the economy for every $1 investment by the government after only three and one-half years. The *total* cost of placement averaged $1,827 per client while the average yearly contribution in federal and state taxes was $1,455.

Project Transition: from institution to employment

Project Transition, a cooperative venture of the Virginia Department of Rehabilitative Services, the Fairfax-Falls Church Community Service Board and the CETA program (Comprehensive Employment and Training Act), is just completing its first year of operation. Approximately 20 mentally retarded people have been placed in paid employment in clerical jobs, food services and housekeeping positions. Most of those already placed are considered moderately retarded and five had been institutionalized. After a brief orientation period, a person is placed on the job site with a staff member. For approximately two weeks the staff member remains on site, helps the client learn the job and advises the supervisor on how to work effectively with the new employee. Staff remain available to do follow-up in case any problems arise.

On the basis of only the first year, this project is proving to be cost effective. It costs $4,000 for each successful placement—considerably less than the $5,500 combined costs for maintaining a person in sheltered employment and providing Supplemental Security Income payments.

Not every severely disabled person can make the transition to gainful employment even with special training programs. A full range of choices and opportunities needs to be available so that all individuals can reach their full potential.

The goal—dignity and self-esteem

It may seem like a paradox, but to save money it's often necessary to spend it. This is particularly true when it comes to education and training programs for people with disabilities. The combined savings resulting from taxes recovered from earnings, income maintenance reductions and institutional avoidance indicate that education is a solid investment. The cost of dependency in most cases far outweighs the cost for developing independence.

We don't need to search hard to see the human advantages of direct service programs for people with disabilities. They and their families benefit psychologically, and the community as a whole is enriched by their contributions. Most important of all, disabled individuals who are able to realize their potential achieve a sense of dignity and self-esteem that transcends the cost benefits.

Dr. Edwin Martin, Assistant Secretary for Special Education and Rehabilitative Services, U.S. Department of Education, concisely summarized the cost effectiveness and human arguments for special education programs in testimony before Congress several years ago when he commented, "In providing appropriate educational services for handicapped children the Congress has one of those rare opportunities to save money by doing the right thing."

Education and rehabilitation programs are part of a process which helps individuals do what they can do to the fullest extent possible. Success may range from an executive level office job to employment in a sheltered workshop or the mastery of daily living skills. The ultimate goal is improvement in the quality of a person's life. This has no price tag.

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*These entries are part of ERIC, an information system operated by the National Institute of Education. Documents contained in the system are assigned an "ED" number and are stored on microfiche in over 630 locations in the United States. "The Directory of ERIC Microfiche Collections" may be obtained by writing to: ERIC Processing and Reference Facility, 4833 Rugby Ave., Suite 303, Bethesda, MD 20014.

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Learning Disabled Adults Form Network

This spring, a group of adults with learning disabilities came from all parts of the country to a meeting held in Washington, D.C. to explore common interests and needs. A new alliance emerged—the National Network of Learning Disabled Adults (NNLDA)—which set four goals at a steering committee meeting in August in Indianapolis, Indiana:

- to coordinate the efforts of all groups of learning disabled adults in order to avoid duplication of efforts;
- to strengthen communication among learning disabled adults;
- to improve the image of learning disabled adults;
- to encourage accommodations for learning disabled adults in education and employment.

One of the long-term goals of NNLDA is to become a clearinghouse of information for and about learning disabled adults.

The new network is drawn from representative local and state groups of learning-disabled adults who felt that the time had come for a nationally visible organization. Although NNLDA is still just a few months old, its steering committee is working to establish the group on a firm basis in order to achieve unity and accomplish its goals. To contact the organization, write to:

National Network of Learning
Disabled Adults-NNLDA
P.O. Box 3130
Richardson, Texas 75080

"Dear Closer Look. . ."

So often parents say to us, "It's a relief just to know that we're not alone." Even though each family's combination of problems is unique, a part of their experience is common to other families having a child with a similar disability. The information that has helped one family to solve a particular problem or find suitable services may be just the idea that sparks a solution for you or someone you care about.

We have chosen from our mail some letters that illustrate questions we often receive. None of the letters are printed here exactly as they were written—but all the problems are real, as many parents have expressed them to us.

Rare disability

Dear Closer Look: *We really need to know more about our little girl's birth defect. She has a rare syndrome, and no one seems to know much about it. Our doctor has never seen this before, and although she's been very helpful, she does not have anything for us to read. Where can we get more information?*

Dear Parent: There is a resource that your physician may contact. She can write to the National Clearinghouse for Human Genetic Diseases, 1776 East Jefferson Street, Rockville, Maryland 20852. This clearinghouse can provide information on genetic disorders to medical professionals, to teachers and students, and also to parents and other members of the public. Although they do not send technical medical information to parents, they do send it to physicians. If there is a pamphlet about your daughter's syndrome that has been written for the general public, they will send you a copy. Ask your physician to write to the clearinghouse and share the information with you.

Dropping out

Dear Closer Look: *I have a son who just turned 16, and he's talking about dropping out of school. They put him in a class for slow learners, because even though we hired a tutor to help him with English and history, he can't read well enough to keep up. He is good at math, and he has a lot of mechanical ability—he can take anything apart, repair it and put it back together again. We want him to finish school, but he's ready to give up.*

Dear Parent: We understand your concern for your son's future. There are several possible solutions; the first step is to discuss them with a counselor, the principal, or perhaps an interested teacher he feels he can talk to. Your son should be part of this meeting.

What was the basis for the school's action in placing your son in the "slow learner" class? Did he have an individual evaluation before he was assigned there? If not, you should request an evaluation of his strengths and problem areas, with special attention to the reading difficulty and its possible causes. If the evaluation shows that special education is needed, he should get it through the school at no cost to you.

Is there a vocational program in the school where his mechanical interest and ability can be developed? Whether or not he stays in school at this point, he will soon need job skills to prepare for a productive future. If your school does not have an appropriate vocational program, ask them to suggest alternative ways that he can receive training.

It is certainly important for him to finish school, but regular classes are not the only route to a high school diploma. Night school, summer classes, and adult education are all ways in which he can finish school and receive a high school equivalency diploma. If you are not familiar with the G.E.D. (General Education Development) program, ask the principal to explain it. If your son chooses to drop out at this point, he should know that these programs can help him when he is ready to complete his schooling.

Respite Care Needed

Dear Closer Look: *We have a seven-year-old son who was born with cerebral palsy. He is not able to walk, crawl or talk. We have no relatives nearby who can help us, and since he was born we have not had a break from caring for him. In spite of his disability, he is very responsive and we love him dearly, but we are both getting exhausted. How can we find a place where he could stay and be well cared for while we take a vacation?*

Dear Parents: Of course you need time away! A respite care program would be ideal. Some communities have excellent ones, but we realize they are not available everywhere. Possibly one of the following places can help you locate a program that offers time-off to parents of handicapped children:

- Local chapters of parent groups and disability-related organizations, for example the Association for Retarded Citizens, United Cerebral Palsy, the Easter Seal Society.
- Human service groups such as United Way, Community Chest, Red Cross or a family service agency.
- Your city or county health department and social services department. Also, some local agencies on aging have lists of capable older people who could care for your son in your home.
- Public or private residential homes for disabled children, which sometimes reserve a few beds for respite care.

If you cannot find help through any of these groups, perhaps you or other parents could approach community groups with the need for a good respite care program. Those that exist are done in a variety of ways: There are cooperative programs (similar to co-op preschools), professional training programs for respite care-givers, and programs existing within a variety of social service agencies.

It's important not to let yourselves become exhausted. Part of being a good parent is knowing when you need a rest from this demanding job—and arranging to have that rest while someone else competent takes over for a while.

Temporarily disabled have rights, too

Dear Closer Look: *Our six-year-old son will be in a brace for the next year or more while he recovers from a bone disease. Both hips are affected, and he will not be able to stand or sit as long as he is in the brace. I am very*

(continued on next page)

Handicapped Young Offenders Go Back to School and into Jobs

Educators, juvenile justice professionals and parents of youngsters with handicaps have long been concerned about the children whose failure at school has drawn them into troubled, anti-social and delinquent behavior. Recent research shows a high incidence of mental retardation, learning disabilities and other handicapping conditions among young people in correctional institutions. A national study conducted and reported by David J. Morgan in "The Journal of Special Education" states that 42 percent of incarcerated youth are handicapped. Studies by Meta Metrics, Inc. and the Law Enforcement Assistance Administration report that 80 to 90 percent of youthful offenders have not completed requirements for a high school diploma and 34 percent are functionally illiterate.

There has been a growing recognition of the critical need to provide special education services for young people in correctional institutions. Many of these youthful handicapped offenders might never have been in institutions in the first place if they had received education appropriate to their needs and had learned to use their innate abilities in constructive ways. The above statistics paint an alarming picture—but they also present an enormous challenge.

Project coordinates agencies, services

A program that has accepted this challenge and is reaching out to this neglected group is now underway in Massachusetts. The Special Education Coordinator Project for the County Houses of Correction is funded by a grant from the Division of Special Education, Massachusetts Department of Education, to Boston's Federation for Children with Special Needs. The key to the project is coordination—bringing together the many different agencies and community services that can help. Nine special education coordinators work with people in the thirteen County Houses of Correction across the state.

Training and education create hope

Of the more than 750 inmates screened by the coordinators, Mark's story is typical. Two months before he was to be released from the County House of Correction, Mark's future looked grim. At nineteen, he had no job skills, a ninth grade education and untreated emotional problems. Through the efforts of the special education coordinator who worked with him, the corrections staff, the local school system and community agencies, he got a chance to learn some useful skills and complete his high school education. Mark's program, arranged in cooperation with CETA (Comprehensive Employment and Training Act), includes a paid part-time job along with vocational training. He is also attending weekly classes to prepare for the high school equivalency exam and is receiving counseling each week at the local mental health center.

In addition to the CETA program, coordinators work with the Massachusetts Rehabilitation Commission, regional vocational-technical high schools and private industry. Most programs begin upon parole, although arrangements can sometimes be made for education or work release while a young person is still serving the sentence.

More occupational training programs needed

One of the most frustrating obstacles that confronts the coordinators is the shortage of occupational training programs. According to Angelica Sawyer, director of the project, "There is an urgent need for local school systems and other community agencies to develop and expand programs that are geared to the special needs of older teenagers and young adults who have to earn money and who need structure, on-going moral support and intensive work-related academic training." The Federation is confident that the Department of Corrections and the Department of Education will continue to work together to expand these services after the expiration of the current grant.

"Dear Closer Look . . ." *(continued)*

concerned about school. He should be starting the first grade, but I don't know how they will accept him, since he has to get around by lying flat in a reclining wheelchair. Will he have to wait until he is out of the cast?

Another problem is that the doctor wants him to continue the community swimming program he was in before, so that he can exercise his muscles. They have refused to let him use the pool now because they are afraid he might get hurt. I think they are just not sure how to handle the situation and would rather avoid it—meanwhile, he's cut off from the other children at the pool, and he really misses them.

Dear Parent: Your son should start school this year, just as you planned previously. Under Public Law 94-142, there is no question of his eligibility to attend first grade. All handicapped children must receive an appropriate education—whether the handicap is permanent or temporary. This means that you and the school should work together to develop an individualized education plan (an IEP) that includes physical education adapted to his needs.

When you talk to the school principal about your son's needs, check the school building for physical barriers. Are there steps or narrow doorways that would not accommodate his wheelchair? If so, the school must work out a solution—one creative principal solved this by having a child with the same type of disorder use a mechanic's creeper to get around!

Have you asked your doctor to write a letter to the director of the swim program explaining your son's need for exercise and how the staff can work with him? This may be enough reassurance to change the policy. Remember, too, that any program, including recreation programs, that receives any federal funding may not discriminate solely on the basis of a handicap, under Section 504 of the Rehabilitation Act of 1973. If the program does receive federal funds, your pointing out their obligation to provide reasonable accommodation under Section 504 should be persuasive.

Cooperative Project Brings Fuller Lives to Disabled People

In a unique project serving the people of Utah, disabled children, youth, and adults in communities throughout the state are learning about crafts, grooming, and personal hygiene. They raise sheep, grow plants—and win prizes at county fairs. As active 4-H Club members, they are benefiting from an unusual partnership between the Cooperative Extension Service and the Exceptional Child Center, both located at Utah State University in Logan, Utah. This partnership is called the Cooperative Extension Project for the Handicapped, or CEPH.

Dr. Glenn Latham, director of the project, tells about a severely handicapped little girl who lives in a nursing home. Through a CEPH field worker, she was introduced to the fun of raising plants on her windowsill. Last summer she attended 4-H camp and — as Dr. Latham expressed it—"probably had a chance to get dirty for the first time in her life."

These stories illustrate just one of the three major objectives of the project: 4-H activities for handicapped children. Another objective is to give direct services to disabled people throughout the state; a third is community development. For CEPH, that means getting people to take a look at how their community's physical and social structure restricts disabled citizens, then seeking ways to create a more open community.

Solving the problems of distance and isolation

As a center serving a large rural state, Utah State University's Exceptional Child Center is acutely aware of what isolation from services means to parents of handicapped children. For years, the Center's staff has developed and distributed special materials and provided help to parents by telephone. In 1977, the Center decided to seek a way to serve all Utah's disabled people, regardless of age, income, location or specific disability.

Utah State University's Extension Service seemed to be an ideal partner. It is an established, permanent service of the United States Department of Agriculture with offices serving every county. It is familiar to most people, and its services are not restricted in terms of who may be served. With that in mind, the Exceptional Child Center worked out a plan with the Extension Service, found funding from a variety of sources for staff and service, and began the Cooperative Extension Project for the Handicapped.

CEPH's goal is coordination

The project is clear about the fact that it does not replace or duplicate services of existing agencies. The CEPH field workers instead work to enrich what is available, to coordinate, and to use their own unique resources to help families and provide services beyond those given through other community agencies. The underlying goal is to improve the quality of life for handicapped people. One exciting and important effort is to reach out to Utah's large population of Native Americans through a CEPH field worker who is a member of the Navaho tribe.

Successes follow CEPH involvement

The small, dedicated staff claims some remarkable successes. CEPH was the organizing force behind one community's efforts to rehouse a handicapped young couple and their child. The CEPH field worker drew on local and county government resources as well as church groups to help the couple replace the dilapidated, rat-infested house on their property with a new mobile home. Through the Extension home economist, the mother is learning about child care, housekeeping and nutritional skills. Whether or not CEPH continues, the Extension Service will be there to help if it is needed.

A young man with severe physical handicaps has achieved his goal of attending college. When other agencies reached the limits of their service, they called on CEPH. CEPH worked with the University to assure him of accessible classes and housing. Some classes were moved to other rooms, and his dormitory room was remodeled to be completely accessible. An advertisement in the paper helped him find an attendent, as well as escorts to accompany him from class to class. With these major barriers removed, the student's college career was off to a good start, both academically and socially.

CEPH encourages thinking about needs

The third goal, community development, has extra significance in a state where there are many small or isolated communities. Smaller populations support fewer parent groups and advocacy groups to communicate needs of disabled citizens. The CEPH effort has spurred such activities as a committee that is now studying their own community's architectural barriers. They are working hard to assure all citizens freedom of access to public buildings.

Citizens may tap many resources

The service is available everywhere in the state. Besides the help given by individual workers, the program offers: packaged instructional materials, a parent newsletter, a toll-free telephone service, a parent resource library and a collection of audiovisual materials.

Packaged teaching materials cover many needs expressed by parents, teachers, and disabled adults. Some teach independent living skills. Some teach health-related topics such as nutrition; others deal with academic skills such as word recognition or programmed spelling. The idea is to produce learning tools that are usable by people with little or no professional training in working with handicapped people—and to produce them in a form that can be distributed anywhere. Library materials, too, which include tapes and films, give parents practical help in working with their children at home.

Parent newsletter gears content to need

The parent newsletter devotes half of each issue to teaching parents about specific methods and materials for working with severely handicapped children. Survey forms are inserted in newsletter issues, asking parents what topics they would like to see covered. In this way there is constant feedback on parents' needs for ideas and information.

People in need of help can contact the project through its toll-free telephone or by calling their county home extension office. Questions cover an infinite variety of needs. Answers may include referral to resources or a visit from one of the project staff members to help solve problems.

A partnership other states could develop

Dr. Latham and his staff are well aware of the exciting possibilities that this kind of partnership offers for other rural states where families are isolated from sources of help. While no direct duplication of the project has been done at this time, the project does have a working agreement with a neighboring state that has expressed interest in similar activities. The staff has worked hard and creatively to bring Utah families new ways to help their handicapped members learn new skills. The CEPH project is one from which many ideas can be drawn and many states may benefit.

Consumers Join Rehabilitation

(continued from page 1)

and yet the evidence of mental or physical handicap is not "hard" evidence. Effective evaluation is needed and, without it, there is no way to determine that this person is eligible—thus no way to bring him or her into the service system.

Consumers object to exclusion

A strong consumer effort to deal with the eligibility problem surfaced at the February 1980 regional meetings convened by RSA to hear comments on the proposed regulations for Public Law 95-602, which governs the administration of vocational rehabilitation programs. In the preamble to the proposed regulations, it was stated: "When these individuals have a physical or mental disability in connection with their learning disability, they may of course be determined to be eligible for vocational rehabilitation services. A learning disability in and of itself is not considered either a physical or a mental disability for purposes of determining vocational rehabilitation eligibility, however. . . "

RSA appoints task force

A chorus of consumer protest pointed out that this was in contradiction to the regulations of Section 504 and that it singled out a specific disability in a discriminatory fashion. In answer to these protests, then-RSA Commissioner Robert Humphreys authorized the formation of a Task Force on Learning Disabilities within the Rehabilitation Services Administration. He also authorized the Task Force Chairman, Dr. Martin Spickler, to add representation from the Bureau of Education for the Handicapped, the National Institute for Handicapped Research and from consumer groups. As RSA's Director, Division of State Program Assistance, Dr. Spickler works with state rehabilitation offices on program operations.

Since the formation of the Task Force, federal, regional and state rehabilitation professionals have been joined by representatives from the Association for Children and Adults with Learning Disabilities, from the President's Committee on Employment of the Handicapped, and from the Office of Special Education (formerly the Bureau of Education for the Handicapped). From the differing viewpoints and perspectives of Task Force members, it became clear that drawing up a final action plan on the question of service to learning disabled people would have to begin with a definition that was legally and practically acceptable. From RSA's perspective, a physical or mental handicap must be present. From the potential rehabilitation client's perspective, he or she must contend with the fact that this is often very difficult to prove. Techniques and methods of identifying adults as learning disabled through physical or psychological testing are largely undeveloped, and not widely available.

Task force submits definition for comment

With these considerations in mind, the Task Force at their meeting in Washington on July 14 voted to send the following definition to RSA's Management Council for comment (Management Council approval would have to be obtained as the first step in policy clearance):

> "*Learning Disability: Individuals who have a disorder in one or more of the psychological processes involved in understanding, perceiving, or using language, or concepts (spoken or written)—a disorder which may manifest itself in problems related to listening, thinking, speaking, reading, writing, spelling, or doing mathematical calculations—will be eligible to receive vocational rehabilitation services if they satisfy the following criteria:*
>
> "(a) *Their psychological processing disorder—in the opinion of a licensed physician or a licensed or certified psychologist skilled in the area of diagnosis and treatment of such disorders—is caused by a physical or mental disability;*
>
> "(b) *Their disorder results in a substantial handicap to employment; and*
>
> "(c) *There is a reasonable expectation that vocational rehabilitation services may benefit the individual in terms of employability.*"

This definition, by allowing either a physician or a psychologist to make the determination, skirts the difficult question of proving neurological involvement. It tends to move away from the "medical model" and toward a functional way of determining the existence of a handicap.

Pearson recounts California experience

At the July meeting, Task Force members in attendance heard a report by conference telephone from Edward Pearson, an education consultant working with California's Department of Rehabilitation. In September 1979, California instituted an official definition of learning disability, and policy and procedures for diagnosing and serving people with specific learning disabilities. California accepts diagnoses from both licensed psychologists and physicians as valid; they classify learning disabilities under neurological handicaps. In June of this year, Mr. Pearson sent a questionnaire to a cross-section of consumers and professionals, asking whether the definition and policy

(continued on next page)

Consumers Join Rehabilitation *(continued)*

were workable in practice. The replies he had received were positive.

In his discussion with the Task Force, Pearson also made the important point that the California rehabilitation system is *not* being overwhelmed by referrals of learning disabled people for services. There had been some concern in the state that a flood of applicants would appear, but this did not materialize.

Need for research is urgent

Although California and a few other states have some formal experience in solving the vocational problems of learning disabled people, there is some feeling that learning disabled people may be among the most difficult to place through vocational rehabilitation. Gail Duane of Rochester, Minnesota, who serves on the Task Force, believes very strongly that there is much research to be done before good rehabilitation practice can be widespread. Ms. Duane, as a learning disabled adult, mother of two learning disabled children, ACLD board member and a former instructor in the rehabilitation counselor training program at Mankato (Minnesota) State University, has a keen insight into both consumer needs and the professional need for more information and training.

Responding to a question about research, she said,

> *"I think it's imperative. We really haven't got a lot of information, and we're operating on a lot of assumptions without significant data bases . . . We are counseling a lot of young people into certain kinds of training without adequate information—we're short-changing them."*

She also sees the urgency of interagency cooperation so that such programs as CETA can succeed in training and placing people who are less severely disabled. Again, assessment is the first stumbling block; she believes strongly that education, vocational education, rehabilitation and Labor Department training programs must cooperate and must have a common base of knowledge.

Adult testing, training must be developed

The National Institute of Handicapped Research is one potential vehicle for sponsoring research on learning disabilities. Although there is a great deal known about the educational side of working with learning disabilities, the old and outworn assumption that people "outgrow" them in adult life has meant that very little is known about their effects on working and living independently. Stereotypes tend to prevail over the gaining of fresh knowledge through research—and everyone suffers accordingly. What types of testing are appropriate for adults? What adaptive and remedial techniques can be developed? How can job training focus on strengths rather than weaknesses? How can learning disabled people avoid dead-end jobs, or working beneath their potential? How can counselors, job trainers and employers deal with the emotional difficulties that learning disabled adults may have? How can these adults learn to deal with their own emotional difficulties, so that increased work skills are not cancelled out by an inability to get along with others? How can higher education be opened up to young people with intellectual strengths who have learning disabilities? These are just a few of the questions that call for research leading to innovative programs.

Change is beginning

At the time that this is being written, it appears that the Task Force action of the past few months is beginning to result in change. One potential factor is that in 1980, the American Psychiatric Association's "Diagnostic and Statistical Manual of Mental Disorders" lists learning disabilities under "specific developmental disorders." Also, the ninth revision of the World Health Organization's "International Classification of Diseases" lists learning disabilities as "mental disorders," which would seem to place it clearly in the category of a medically recognized disability. These manuals are used by RSA as basic diagnostic references. A memo with the definition from the manual attached was distributed to Task Force members at a meeting in Washington on September 19.

Task Force should have continuing role

During that meeting, the Task Force completed a text of the final action plan for submittal to the Management Council of RSA, working from the final draft prepared by RSA staff members. Management Council approval is only the first step in a lengthy clearance process.

It is apparent that it will take time before effective services for learning disabled people will be widely available, but there is a strong effort to surmount the eligibility barrier. State and local rehabilitation offices are actively seeking training, guidance and assistance in serving this population. Dr. Spickler believes that the Task Force has played —and should continue to play—a strong role in bringing changes about. He believes the Task Force should continue to participate in the future development of adequate services, beyond the immediate goal of completing the action plan.

He echoes the need for more research. He perceives training of state and local rehabilitation personnel in working with learning disabled people as vital. With the encouragement and efforts of consumers and the interest being shown by rehabilitation professionals, he believes that young people with learning disabilities can look forward to brighter prospects in the future.

—MO

Closer Look is. . .

If you are seeing our newsletter for the first time, you may want to know more about us. Closer Look is a national information center for the parents of handicapped children. We help parents, professionals and advocates learn about educational rights, about parent groups and coalitions, and about sources of help and services in each state. Our publications are free. If you would like information to help a particular child, send your request to us, being sure to include the child's age, disability and special problems so that we can send appropriate information.

"KIDS" Teach Kids in California Classrooms

Perhaps you have seen the Closer Look television spot that shows a classroom where a blind child explains how she manages to pour milk without spilling—while a sighted child wearing a blindfold misses the glass and pours milk on the table instead. There were other children in that spot, with other disabilities, showing nondisabled children their own ways of coping with daily living. What was happening in that classroom could be happening in many schools across the nation.

Planning and preparation are important

Whatever the conflicts over the issue of mainstreaming, the fact remains that many children are being successfully mainstreamed and that much of the success depends on the attitudes that prevail in each classroom. Much of it obviously comes from careful planning, thoughtful preparation and a good measure of knowledge about individual needs of children who have handicaps.

More and more books, films, puppet shows, and other media are coming out to promote acceptance as well as knowledge.

Project focuses on shared experiences

One program that uses teams of disabled children and adults as a powerful backup to its teaching aids is KIDS, or "Keys to Introducing Disability in Schools," a project of the Center for Independent Living in Berkeley, California.

The Center for Independent Living is an ideal home for a project of this nature. Since its beginning as a problem-solving center for disabled students, run *by* disabled students, it has branched out into a community service that works with disabled people of all ages. The staff, remembering their own experiences as children with disabilities, had strong feelings about the necessity of mainstreaming—but they were also aware that if it is to work, the ground must be prepared.

Beginning early: Teachers learn, too

They proposed a project that would teach the facts about handicapping conditions on a level that children could handle in their earliest school experience, kindergarten through third grade. They included a separate training program for teachers, who have the daily classroom realities to deal with.

With funding from the (then) Bureau of Education for the Handicapped, the Center for Independent Living began the KIDS project with a search for successful programs and materials teaching the concept of acceptance of handicapped people. They created a curriculum for teachers and one for children and chose five schools in Berkeley for the pilot project.

An important component of the KIDS training is the amount of time that is devoted to it. The first session, for both children and teachers, is only an introduction: Fact and fancy are sorted out, similarities and differences between disabled and nondisabled people are discussed and stereotypes are compared with reality.

Role models bring lessons to life

It is in the follow-up that this information is really brought to life. After a preliminary teaching session on each of four kinds of disability, there is a follow-up lesson that teams an adult and child who have that disability as models for the children. They answer questions, describe themselves and how the disability affects their lives—and bring home the lesson that they are very much like the rest of the world in going about their daily lives. It is an important lesson for these young children, and the results show in the testing of attitudes that follows the training.

Teacher training totals ten hours of inservice work that enriches teachers' knowledge of adaptations in classroom and recreation, as well as useful medical and legal information. Special attention focuses on how disabled people compensate for difficulties in communication and in movement.

Parents become trainers, too

The KIDS staff works to develop new trainers for the curriculum programs, reaching out to share their experience with as many people as possible. Some of the trainers are parents of handicapped children; parents also serve on the KIDS advisory committee. At the beginning of its second year, KIDS added a classroom mainstreaming specialist to the staff, whose job is to work directly with schools and teachers to solve problems and coordinate the effort to mainstream disabled children successfully.

If you want to know more about the program, write to: Lynne Fingerman, Project Coordinator, Keys to Introducing Disability in Schools, Center for Independent Living, Inc., 2539 Telegraph Avenue, Berkeley, California 94704.

Other programs are underway

Other programs are successfully getting across the same message. They all have ideas that others can try out. For instance, TASK—a parent coalition in Orange County, California, presents a simple puppet show to elementary school children. A team shows two dolls (one handicapped) playing together. They ask each other questions about the disability and modify their games so that both can take part. The team also brings aids along, such as braille books and hearing aids, that children can examine.

PACER, another parent coalition in Minnesota, has also found that puppets are effective. Puppets can ask questions that children may be shy about asking another child. They have high appeal for young children—and don't have to be costly. A little acting can go a long away.

New friends, new experiences result

Changes come about naturally once attitude barriers are overcome. These changes are not just statistical—even though the statistics on attitude change are impressive. One nine-year-old guest speaker—a child with Down's syndrome—met a new friend in his neighborhood through the KIDS training. Another child struggled through a whole day with crutches. As he explained it, "If other people have to use them all the time, I want to finish using them for my whole day!"

Mr. **Erdahl**. Thank you very much, Mr. Ladd. We appreciate receiving your testimony.

Now again for the record and for the audience, it is my pleasure to introduce Paula Goldberg, who happens to be from Minnesota. Welcome to Washington.

Again, you may read your statement or summarize it, whatever is most comfortable for you.

STATEMENT OF PAULA GOLDBERG, CO-DIRECTOR, PACER CENTER, INC., MINNEAPOLIS, MINN.

Ms. **Goldberg**. Thank you very much, Chairman Erdahl and members of the subcommittee. My name is Paula Goldberg. I am codirector of the Parent Advocacy Coalition for Educational Rights, otherwise known as PACER Center. We are a statewide coalition of 18 organizations in Minnesota that are concerned with the education of handicapped children. Our organization informs parents about their rights and responsibilities under State and Federal special-education laws so that parents can learn how to work with the schools to develop appropriate programs for their children. We present workshops on special-education laws and provide individual assistance to hundreds of parents yearly.

Our philosophy is "parents helping parents." Most of our staff and volunteers are parents of handicapped children. We are funded by the Office of Special Education, Division of Personnel Preparation, to provide training to parents of handicapped children. During the 2 years that our project has been funded by this agency, we have reached over 12,000 parents of handicapped children, educators, and other interested persons. We have been overwhelmed by the response we have received from parents who want to become more knowledgeable about their children's rights and opportunities in special education.

I am very pleased to be here today and to comment on the final report of the Task Force on Equal Educational Opportunity for Handicapped Children. As a representative of a parent coalition, I would like to thank Congress for passing Public Law 94-142. It is an important and significant piece of legislation because it assures all handicapped children a free, appropriate education. We continually are told by parents that they are thankful for the Federal law. Parents of older children tell us that they only wish the law had been in existence when their children started school. Many handicapped adults are saying the same thing. Public Law 94-142 has had an impact on the education of handicapped children. Changes have occurred; we have made progress in a short period of time toward providing equal educational opportunities for handicapped children. However, some aspects of Public Law 94-142 and section 504 have not been fully implemented.

We have been asked today to comment from the perspective of a parent coalition on some of these unfulfilled goals as they relate to the three sections of the task force report. It is apparent that the task force members have invested considerable time, effort, and thought in the preparation of this report. We feel that the recommendations are sound and should be implemented.

We believe that the education of handicapped children is a bipartisan issue and that there is broad support for the goal of quality education for these children. We at PACER realize how important it is for people to work together to accomplish a goal. Congress must assure that the agencies charged with the responsibility of implementation have the resources and ability to use creative and innovative techniques to insure the enforcement of Public Law 94-142.

I will comment on the three major aspects of the report—enforcement and monitoring, policy, and technical assistance.

We support the recommendations to strengthen the enforcement of the law. The recommendation for an annual compliance review activity plan is important so that the Office of Special Education and the Office of Civil Rights will work together to insure compliance. Many of the 14 priority compliance issues and the 69 subissues listed in the appendix of the task force report have been a concern to parents. For example, we have received many calls from parents whose children are in segregated centers only because the related services the children need are not available in regular schools or other less restrictive settings. Hopefully the compliance plan will help remedy this problem.

We worked with a parent whose little girl is very bright and happens to be in a wheelchair. The girl attended a segregated school for physically and multiply handicapped children and was very unhappy. The only reason she was in this facility was that the school district refused to provide physical therapy in a mainstream situation.

An excellent start has been made to provide data concerning the compliance issues. However, the descriptions of some of the compliance issues do not specify how data will be collected. We feel that these data methods should be spelled out.

A second recommendation in the report is that a more systematic procedure be developed for handling parental complaints, with specific time lines for reviewing complaints. This should be helpful to parents who may have been reluctant to file a complaint knowing that it might take a long time for any action to occur.

Also under enforcement, a list of possible sanctions has been proposed to be initiated when the law is not being implemented. We assume that some methods will be used to determine what criteria will be followed and which sanctions will be imposed for different types of problems.

Basically, our experience in Minnesota with enforcement procedures is that the Office of Special Education staff have been responsive to the needs of parents. Prior to Public Law 94-142, Minnesota law had stated that handicapped children should be served. However, the law was vague and lacked due-process procedures. Parents found it nearly impossible to have an effect on the system. It was the rare parent who was able to move the system for his or her handicapped child. If it were not for Public Law 94-142, Minnesota would not have the special education statute it has today. Parents now have more voice in decisions concerning their children. Schools cannot base their decisions about the education of handicapped children solely on administrative convenience. We support the enforcement of the Federal regulations and feel that the procedures as underlined in the task force report need to be implemented.

We, as a parent coalition, strongly believe that there is a need for clear policy development by the Office of Special Education and the Office of Civil Rights. For example, in Minnesota there has not been adequate implementation of the surrogate-parent provision of the law. This provision requires that handicapped children whose parents are unknown or unavailable must be represented in educational matters by a surrogate parent who is appointed by the State. In Minnesota no training of surrogate parents has been undertaken, and there is no method to assure that surrogate parents have been appointed. People in Minnesota and elsewhere have had many questions on this issue. Now in the last few months, the Office of Special Education has issued a draft policy paper on surrogate parents. We feel that this policy was needed and should help Minnesota to follow the provisions relating to surrogate parents.

The task force also recommended that policy decisions concerning related services be developed. Related services are those which are necessary for a child to benefit from special education services, such as occupational therapy—OT—and physical therapy—PT.

We are spending a great deal of time with parents and schools discussing whether the school districts must provide related services. State and Federal agencies differ on their interpretation of the law regarding related services, and families are often caught in the middle, with no clear understanding of their rights. The attached letter to PACER was written by a 7-year-old girl whose younger brother was denied an appropriate education because the school district refused to pay for occupational therapy and speech therapy. It documents in very clear terms the problems a family goes through when policies are not clearly defined and the laws are not implemented.

[The information submitted by Paula Goldberg follows:]

DEAR PACER CENTER: Please send a list of names or schools for blind multiple handicapped children. I have a brother whose name is Blaine. He is five years old and we are thinking about residential schools. Mom is going through a hard time now in her life. We have tried to get some money, but we can't and we dont like it. If you will send us the list of schools, please put the phone numbers on too. Send it to:

Leon Dulas, 403 North East St., Blue Earth, Minn.,

Could you send it free? If you can tell us please.

BLUE EARTH, MINN.,
November 6, 1980.

DEAR PAULA: I felt I wanted to write and extend my sincere "thanks" to you at Pacer. You gave us some much needed information and because of that I am trusting our district to stand responsible for their portion.

As I was scanning over the top of my seven year old daughter's desk, I came across this letter she had written to Pacer. I have enclosed a copy of it for your bulletin board if you like. I loved it. It was a very rough 8 days in our home and this is how it was aborbed by a 7 year old child.

Keep up the good service that you have to offer to parents out there, who, believe me, can feel so alone at times.

Sincerely,

JAYNE DULAS.

Ms. GOLDBERG. For a 7-year-old to sit down and write a letter like this, you have to realize the trauma the family must be going through.

We urge that the policy papers on related services and other unresolved issues be prepared as soon as possible. Parents and schools alike tend to waste a great deal of time, money, and energy when they must try to interpret areas of the law that could be clarified by policy statements.

We support the recommendation in the report that urges widespread dissemination of these policy decisions, including publication in the Federal Register.

The recommendations concerning technical assistance call for cooperative efforts between the Office of Civil Rights and the Office of Special Education, including the development of an annual plan for technical assistance. We support the recommendation, since it will help insure that duplication does not take place and that priority concerns for technical assistance are addressed. The Report on Technical Assistance in appendix F lists some of the technical assistance efforts already begun by the Office of Civil Rights and the Office of Special Education.

We support the recommendation that technical assistance be provided to parents. PACER's experience shows that parent groups can be a very effective source of such assistance, and that when parents are informed, many problems can be resolved at the local level. We would like to share with you some evaluations that we have done from our project. In evaluating the effectiveness of its own services for parents, PACER conducted a random sample telephone survey of over 220 parents who had received information on their rights during the last 2 years. The results are in the enclosed evaluation reports. Very briefly, because of the assistance they received from PACER, more than 70 percent of the parents surveyed felt that they had been able to obtain at least some of the services their child needed. Ninety-four percent of the parents felt more confident with their ability to work with the schools, and more than 76 percent of the parents surveyed felt they were more involved in their child's educational program. Other parent organizations across the country are also finding similar responses from parents. This experience shows how effective technical assistance can be for parents. Our only reservation is that the report does not specifically state when the technical assistance to parents will be available or who will provide it. We hope that the needs assessment plan will be more detailed.

We feel it is essential for the U.S. Department of Education to be efficient and effective if an appropriate education is to be provided to all handicapped children. Because of the unmet needs of handicapped children, the task force report should be implemented. It is a good beginning step. Federal positions will be made clearer as policies are developed and as the agreement between the Office of Civil Rights and the Office of Special Education is implemented. The Federal role in the education of handicapped children is important, and it is evident to us as a parent coalition that States have not assumed the entire responsibility themselves.

It is our hope that the 1980s will be the decade that will see all handicapped children receive a free, appropriate public education.

On behalf of the parents, handicapped children, and parent groups in Minnesota, I would like to thank you, Chairman Simon, and all the members of the subcommittee, for the excellent work you are doing to assure that all handicapped students in our Nation receive appropriate educational opportunities.

Mr. ERDAHL. Thank you very much, Mrs. Goldberg, for that very fine statement.

Now we will move to Martha Ziegler, director, Parent Information Center, Federation for Children with Special Needs, of Boston, Mass. So nice to have you with us today.

STATEMENT OF MARTHA ZIEGLER, DIRECTOR, PARENT INFORMATION CENTER, FEDERATION FOR CHILDREN WITH SPECIAL NEEDS, BOSTON, MASS.

Ms. ZIEGLER. Thank you, Mr. Erdahl.

Mr. Chairman, members of the subcommittee, thank you very much for inviting me to appear before you today to talk about one aspect of a subject that is of great importance to me and to parents of children with special needs across the country. I would like to insert in response to your invitation to read or summarize, I will do as my autistic daughter would do, I will read it because if I do not, I will lose my place.

Mr. ERDAHL. Fine.

Ms. ZIEGLER. I speak as a parent of two children, one of whom receives special education services. I am also the executive director of the Federation for Children with Special Needs, a coalition that represents families in Massachusetts who have children with a variety of disabilities; the federation recently assumed the additional responsibility of serving as coordinator of a national network of parent centers like ours. And it includes PACER of Minnesota, I am happy to say.

These are, to say the least, interesting times. At home in Massachusetts, parents of handicapped children wonder which to worry about first: drastic changes by President-elect Reagan, dire effects of our local taxpayers 'revolt, or the continuing stresses of day-today living with a handicapped child.

It is worth recalling that Public Law 94-142 has enjoyed bipartisan support from the beginning, and was in fact signed into law by a Republican President, Mr. Ford, somewhat reluctantly, but signed. Furthermore, it has enjoyed bipartisan support and interest from this committee as well as from the Senate committee.

The essence of Public Law 94-142—the individualized education program—should appeal to philosophical conservatives because of its emphasis on individualism, on individual liberty, individual potential, and maximum independence for individual persons. In the past our stereotyped expectations often meant that our handicapped children fulfilled society's predictions and wasted their lives in expensive, dead end institutions. We failed to train and to prepare other students with special needs for anything but a lifetime on welfare or sometimes in prison.

Furthermore, the IEP has another appeal for responsible citizens regardless of political persuasion, because it can serve as a powerful tool for measuring accountability, and doing that at the level where it matters, at the level of delivery of services to individual children.

The particular topic under discussion today, the Final Report of the Secretary's Task Force on Equal Educational Opportunity for

Handicapped Children, should be attractive to the new administration, because it constitutes an effort to avoid duplication of government services and make them more accountable to the citizens for whom they are aimed; such coordination is bound to promote cost effectiveness.

As a parent whose experience with the former Bureau of Education for the Handicapped had been one of supportiveness, creativity, and wholehearted commitment to our children, I was at first dismayed by the highly publicized report by advocates criticizing the implementation efforts of the Bureau, especially the Bureau's enforcement efforts. I knew that the Bureau had responded to parents and other advocates in our State, Massachusetts, had denied a request for a waiver on the no-supplant requirement, and insisted on the strictest compliance. I also knew that the Bureau had employed its ultimate weapon and had withheld funds from at least one State found in noncompliance.

Nevertheless, I must admit that the earlier report was effective, since it has served to generate the careful planning and coordination between the Office of Special Education and the Office of Civil Rights reflected in this task force report. The recommendations outlined in the report should improve services for school personnel, parents, and the children. Reducing the burdens of time and paper for education agencies works to the benefit of all concerned, not just to the school staff who are directly affected. The proposed exchanges between OSE and OCR should also remove some of the burden from parents, who now are often confused, not knowing whether to register a complaint with OSE, OCR, or both.

I especially applaud the intention to use complaints as part of the data base for establishing priorities for compliance reviews. To parents such a step seems obvious, but I know from experience that something out there mitigates against acceptance of this choice by administrators. There may be a temptation to be "scientific" about compliance reviews and select only random samples. Also, this decision assumes that a reliable complaint system is in place. Random selection is also important, for it has powerful psychological effects on motivation to comply.

I would like to add to that, a low number of complaints or a lack of registry of complaints can have the opposite meaning. It can mean that parents are not being well informed and not knowledgeable in the ways for registering complaints and seeking services, and that is another reason to provide the random selection with the reported complaint.

It is good to see the combination of the deterrent strategy of randomness along with information based on complaints.

Including complaints in the overall information collection should also make technical assistance better targeted and more efficient. In fact, I am impressed with the careful balance of the report between enforcement and technical assistance. Enforcement alone holds very little promise for the children needing services.

I can see one additional benefit accruing from this carefully planned coordination: Involving OCR in this active way should bring that agency's experience with other nondiscrimination mandates to bear upon special education so that we should stand a better chance of avoiding the layers of discrimination that can suffocate children, a handicapping condition combined with racial minority status, for instance.

There are a few potential problems that parents will need to monitor carefully. There is a possibility of undue time lags because of the involvement of two separate agencies. A structure for follow-up after noncompliance has been cited, must be detailed and followed. Parents across the country have occasionally had the experience of having the State or local education agency cited for noncompliance and then seeing nothing more happen.

I have to add that the chart presented a while ago was not very encouraging on that point. I believe OCR and OSE need to take another look at that.

Parents of handicapped children are also taxpayers. We share an interest in cost effectiveness. Perhaps more than most taxpayers we oppose the waste of Government money because wasted funds are funds that might have gone for services badly needed by our children.

Thank you.

Mr. **Erdahl**. Thank you very much for another fine statement.

I think we have had a good panel. If I could summarize the thrust of your presentation, it is a concern that I share and that is, one, we pick priorities for spending and saving to reflect the mood of the times and to realize what is spent wisely for education is perhaps the best investment we can make. It is an economic investment which pays dividends in addition to being a social investment touching the lives of individual people.

Another thing that has come out, directly or indirectly, from each one of you is that usually people rise to the level of their expectancy. If we expect much of people—and this applies to the handicapped or other individuals as well—they rise to that level.

Also, we have had different definitions of IEP in the sense individual education plan or individual educational program. I think of it also as an individual educational possibility Hopefully we will stress that as we deal with statistics, and you certainly deal with that and don't ignore the individuals.

We in Congress setting policy, distributing funds, must also remember while we might deal with statistics which sometimes are faceless and nameless, we should never forget the individuals that comprise these statistics.

A couple of questions that come up: Mrs. Moore, you might respond, we talk about the least restrictive environment.

As we deal with some individuals, this is in the regular classroom, in the mainstream. For other individuals the least restrictive environment could well be in a special class or some people call a segregated class.

Would you be willing to share some views on that, please?

Ms. **Moore**. Cory Moore.

I think that the point that I most like to make is that education in a segregated environment is usually poor education in terms of the child who needs good role models, who needs nonhandicapped peers to view and to associate with, because indeed we are all part of the same society. I see that kind of segregation as a poor device for the children who are without handicap.

We will have a generation under Public Law 94-142, if the least restrictive environment is seen in as broad a view as I would like it to be seen, we will have a generation that grows up alongside of one another.

What this means to me is that the future teachers, the future doctors, the future employers will understand people with handicaps because they will have associated with those children.

This does not necessarily mean blanket dumping of children, obviously, in mainstream situations. I don't see least restrictive environment meaning ignoring the special needs of children, but it seems to me that children with even the most severe handicap can at least be in a building that is open to all children, open to all teachers, that the difference between regular—I won't go further on that word—but the implications behind regular education and special education really do lead to a society that focuses on differences, and I personally would like to see that stopped.

I think the message too often that families receive, not just parents but siblings of children with handicaps, is one that is not only isolating by damaging—and while I am very much aware of the difficulties that least restrictive environment, that requirement imposes, or being imposed on school systems, I would like to see it implemented to the fullest degree possible.

There are places that are doing this. Tacoma, Wash., has had what they called a system of progressive inclusion that predates Public Law 94-142. So it is not a totally new concept.

Mr. ERDAHL. Anyone else wish to comment on that general area? Ms. Ziegler?

Ms. ZIEGLER. I never miss an opportunity to talk about mainstreaming, partly because I am so proud of my 16-year-old autistic daughter who is partly mainstreamed in public high school, something I never dreamed possible. I would like to share a personal story along that line.

A couple of weeks ago I took my daughter with me and involved her in a panel presentation at the Association for Severely Handicapped. It happened to be on this subject, integration of severely handicapped children.

We prepared a little script, and it was really a transcription of a conversation she and I had had and as always I learned as much from it.

She started the conversation. She began by saying, "Am I autistic," and from there we went to what does that mean.

I asked her, "Are you any different from the other children at your high school?"

Her answer was, "Mary Jean has long brown hair. Janice wears glasses, an Afro, and has a brown face."

Then she asked me, "Do retarded children go on dates?"

I told her, "Yes, of course, they do."

We have never used that term with her. I asked her, "Do you think you are retarded?"

She said, "Yes."

And I said, "Why do you think that?"

She couldn't answer. Finally she said, "Elementary school made me retarded." And I thought about that a lot.

I finally realized in elementary school she had always been in special class. In her own mind she was in a retarded class. Therefore, she was retarded. She could not articulate that at the time and still can only articulate it indirectly, but the differences that she now perceives in a mainstream setting are the same kind of differences that most of us perceive in the people around us.

Mr. ERDAHL. Thank you very much.

Mr. Ladd, you wish to comment?

Mr. LADD. I would like to add to what Mrs. Moore said about the need for minimizing the use of special classes, separateness, to say that it seems to me this illustrates one of the things that she had mentioned in her main presentation, that is, the overriding importance of technical assistance at the point of delivery of services to an individual child.

It seems to me that the main obstacle to mainstreaming of many of our special students is the lack of time and imagination for effective curriculum design and adequate support in teacher aids and so on to provide the time for accommodating the student with special needs in the mainstream class.

Without being able to define in any generalized way where separateness is needed, there are those cases, and again many of our local schools need special assistance and diagnosis for identifying just who really must be given separate instruction.

I would agree with my colleagues that where separateness is needed, it should be limited so far as possible to the minimum part of the day necessary, to only those particular subjects necessary, and should be regarded as a temporary thing to the extent possible.

Mr. ERDAHL. Thank you very much.

Ms. ZIEGLER. Could I make a few more general observations. I do feel with mainstreaming that in general we are still in a transitional, groping phase. Teachers and schools have a lot of problems knowing how to do it best. I serve on the Advisory Committee for the National Support Systems through the deans' grants and in that capacity I am seeing some exciting changes in the formal preparation of teachers that a lot of people are not aware of.

And I think in maybe 5 or 6 years time we are going to see teachers much, much better able to mainstream students and they are now beginning to think in terms of picking up some of the concepts in Public Law 94-142 to apply to all children, not just handicapped children, and that is the end of the rope we are all looking for.

Ms. MOORE. May I take just one moment to say that I would like to point out that LEAs are in their own way sometimes dealing very effectively and efficiently with the difficulties inherent in mainstreaming, and I did promise if I possibly could get it in to comment on what our own system is doing.

Unfortunately, it is on a very limited basis. It is a small office, only four people, called the Department of Interagency Programs, inservice training unit, and they have put together a resource booklet for mainstreaming that I would like to see duplicated in every LEA.

One of its particular strengths, it seems to me, is it was designed by educators and it is being implemented not only through educators, but through parent involvement as well. And each of our schools in Montgomery County eventually will have both an inservice coordinator who will help train teachers in what mainstreaming is really all about, not just the laws and administrative procedure but actually what goes on within a classroom, but also a parent special needs chairperson who will help provide emotional support and advocacy training for parents.

Mr. **Erdahl.** Thank you very much. This has been very helpful. We will take these things under consideration as we review the law and look at the possible changes in it. The suggestions that you have been so kind to share with me today will be helpful.

Thank you very much.

Mr. **Erdahl.** The next witness is Marilyn Rauth, director of Federal relations, American Federation of Teachers.

If I have to leave, if Mr. Simon does not return, I will have to rule to officially close the meeting but to leave it open for staff to ask some questions if some come up.

Start out and I will watch the clock and I will run over to the Senate side and be a few minutes late.

STATEMENT OF MARILYN RAUTH, DIRECTOR, FEDERAL RELATIONS, AMERICAN FEDERATION OF TEACHERS

Ms. **Rauth.** I am Marilyn Rauth, director of the educational issues department of the American Federation of Teachers, AFL-CIO. On behalf of the 575,000 teachers, paraprofessionals, and other members of the AFT, I would like to thank you for this opportunity to express our views on the potential impact of the Secretary's task force report.

We cannot claim to be experts on the intricate workings of Federal/State mechanisms for enforcement of legislation such as section 504 and Public Law 94-142. We do know, however, significant noncompliance with major provisions of both these laws is the norm rather than the exception in most school systems of this country, whether they be urban, rural or suburban. It is admittedly from the local perspective which we view this recent effort to improve assurances of equal educational opportunities for handicapped children.

As educators, we are aware that levels of expectation can affect outcomes, so in this sense we are most hopeful that coordination of efforts between OCR and OSE will improve monitoring, enforcement, and assistance capabilities. We still feel strongly, however, that the effort does not go far enough nor look deep enough to fully address some of the very real problems in this area.

The AFT has long maintained that Public Law 94-142, for example, cannot work in its present form without a funding level of several billion dollars.

The major focus must be on assuring realistic means of compliance, not just pointing out noncompliance. Efforts should be preventive, not punitive, if at all possible. OCR and OSE responsibility should be fostering compliance, not just catching noncompliance. This would require special training of OCR and OSE staff which could be incorporated in the training plan activities.

We would like to see full time staff trained, available, both in OCR and OSE offices.

One of the biggest problems is whether a teacher, administrator or school board member is, when a disputed issue comes up as to whether we are in compliance or not, it is very difficult to get a definitive or reliable answer from any level. And even if you find someone at one level who seems to know what the regulation is and laws require, they tell you, well, but you can't count on this because it may be coming from some other level.

There has to be some way to get information from a very few sources and to make sure the information you get is really dependable.

From our perspective, another major compliance issue is omitted from the task force report: What protection should be afforded school and State education department employees who trigger complaints about noncompliance with either of these laws?

We still have situations where an individual who stands up for the rights of handicapped individuals are being subject to harassment and even trumped up insubordination dismissal charges, and that is a very lonely feeling out there. Anyone who has been in the schools knows that there is an educational Siberia, and if you don't lose your job, things can be made very uncomfortable for you at the very least.

Mr. ERDAHL. If I could interrupt, I was handed a note that we do have a vote that started about 5 minutes ago and I have to excuse myself and run over for that.

It is time for me to adjourn the hearing, but staff members will be here for some questions that they might have for you. Your statement will be entered in its entirety into the record. I apologize for having to leave.

Ms. RAUTH. Do you want me to go on or do you want to ask questions?

Ms. MORRISSEY. Patricia Morrissey, professional staff member with the Select Education Subcommittee.

Ms. RAUTH. I will finish the statement for the people who are here, a few major points.

Another topic in appendix E of the report which—well, in appendix E of the report there is a summary of priority compliance issues for enforcement of Public Law 94-142 and section 504. First, we begin a major omission. There is no mention of inservice needs for personnel working with handicapped children in the schools. Children with varying disabilities are now in the least restrictive environment places with personnel far less qualified and the personnel from the more restrictive environments from which they came.

The AFT supports in appropriate conditions least restrictive environment placements, but simply moving children from a more restrictive setting into a less restrictive setting where the personnel has not been prepared, where the rest of the class has not been prepared, and where there are not adapted resource materials, that is irresponsible and that does not meet the intent or the spirit of the law. Yet, that is frequent and we think something ought to be done with it.

One of our major frustrations is that in the field, teachers really bring up issues related to these laws as childrens rights issues.

The questions brought to us are not teacher rights issues for the most part. Children are being hurt and yet we have civil rights legislation. Why? And why can't we do something about it? Where is our access to some sort of enforcement or compliance mechanism so we don't have to watch these children in these situations day after day because they are there day after day, and they just don't feel it is right and something ought to be able to be done.

So far, in all of the time that Public Law 94-142 has been in place we have been rather helpless and powerless in many of these situations. So you have got the teacher organizations of your country who know better than anybody else what is going on in these classrooms saying to you, there are problems and the letter of the law is not being met. And yet we get no response. So, hopefully, some time someone is going to sit back and listen to this and we can act together to correct these violations.

We are also concerned that the chart provided in the priority issue compliance section totally misses hidden noncompliance issues. These are very widespread but difficult to monitor: Staff being discouraged, if not outright forbidden to refer children for evaluations because waiting lists are too long, evaluation is too costly, or placements unavailable. This affects not only teachers but lower level administrators as well. They are all in this same position in many instances.

Verbal warnings or commands not to make certain placements or request certain services on the IEP are very frequent. The schools are in a real bind because they simply don't know where to get the dollars to provide these services and it is a very legitimate problem Congress needs to address.

We say there should be a massive infusion of additional funding from the Federal level, but we are not going to pretend that this makeup of the lack of dollars isn't going on either at the local level. There are abuses of the law which seemingly look like compliance, massive least restrictive environment placements, but they are based not on children's individual needs but rather in the ability to save the higher cost of so-called more restrictive settings. This is something that needs to be looked at.

Another major point is that we think that the data collection should go on and are hopeful that these efforts will improve, but even more so, we think the real issues are going to be looked at when we get empirical research that shows the real effect of implementation, how the laws are being implemented, and we have a serious question as to why so little empirical research has been done. That is the only way we feel the real debate will be settled as to what is really going on out there in the schools.

Data collections, as you know, are somewhat arbitrary and often questioned as to its own validity and reliability.

The percentage of children in least restrictive environment placements ultimately are what the law says, that this is supposed to be done on an individual needs basis.

Do percentages, other than if you find that perhaps 1 percent of your handicapped population or disabled population is mainstreamed or in least, less restrictive environments, clearly there is not much activity going on but in certain levels you don't know what that tells you so it is only the empirical research which will give us real answers.

On the technical assistance plan, we think that seems very promising but we believe the final report to be produced by OCR and OSE procedures should—excuse me—that that section recommending procedures for providing joint technical assistance relating to priority areas should include means of helping State and local education agencies obtain the resource necessary for compliance, recommendations on how to avoid noncompliance areas, et cetera.

We mention also on pages 5 and 6 of the testimony some additional items which we think would be beneficial in the staff training of OCR and OSE.

In conclusion, we support the efforts of OCR and OSE to coordinate their activities in the four target areas. We think the task force report and memorandum are a step in the right direction. Yet effectiveness in those four areas require much more extensive efforts than those cited in these documents.

The more efficient data collection developed which we think is good and fine, the more obvious noncompliance will become.

You can expend all of your energies in getting that information, which we say is no secret. Where we think you get your greatest return is by trying to provide the technical assistance to help the schools devise real means and acquire the necessary resources to let us really accomplish the goals in actuality and not on paper or theoretically that section 504 and 94-142 work for.

[The prepared testimony of Marilyn Rauth follows:]

PREPARED TESTIMONY OF MARILYN RAUTH, DIRECTOR, EDUCATIONAL ISSUES DEPARTMENT, AMERICAN FEDERATION OF TEACHERS, AFL-CIO

I am Marilyn Rauth, director of the Educational issues Department of the American Federation of Teachers, AFL-CIO. On behalf of the 575,000 teachers, paraprofessionals and other members of the AFT, I would like to thank you for this opportunity to express our views on the potential impact of the Secretary's Task Force Report on Equal Educational Opportunity for Handicapped Children.

We cannot claim to be experts on the intricate workings of federal/State mechanisms for enforcement of legislation such as Section 504 and Public Law 94-142. We do know, however, from reports and visits to the field that significant non-compliance with major provisions of both these laws is the norm rather than the exception in most school systems of this country, whether they be urban, rural or suburban. It is admittedly from the local perspective which we view this recent effort to improve assurances of equal educational opportunities for handicapped children.

As educators, we are aware that levels of expectation can affect outcomes, so in this sense we are most hopeful that coordination of efforts between OCR and OSE will improve monitoring, enforcement and assistance capabilities. We still feel strongly, however, that the effort does not go far enough nor look deep enough to fully address some of the very real problems in this area.

The AFT has long maintained that Public Law 94-142, for example, cannot work in its present form without a funding level of several billion dollars. Much wisdom is contained in one of the conclusions reached in the only longitudinal, broad-scale study of implementation of Public Law 94-142, conducted by SRI International for the former U.S. Bureau of Education for the Handicapped:

"Some of the problems posed by these circumstances can be addressed at the local level as LEA policymakers become more cognizant of their responsibilities under the law. But most have implications for assistance from agencies and others beyond the LEA level: SEAs, State legislative and executive branch policymakers, the professional field, and BEH or Congress. LEAs need help in delimiting their legal and financial responsibility for special education and related services. They need help in clarifying the borders of their responsibilities vis a vis other agencies (e.g., health, welfare). They must also have assistance in acquiring more resources. Otherwise, the bounds of what LEAs must provide at no cost far exceed the resources available, and FAPE will continue to be defined *de facto* by what is currently available.

"Finally, because continuing to monitor LEA compliance with procedures will distract attention from the systemic changes necessary to meet the spirt of the law, assistance designed to enhance local capacity to achieve FAPE should be emphasized and monitoring procedural compliance correspondingly deemphasized. Achieving procedural compliance can be accomplished; realizing the intent of the Act, however, is far more challenging and requires financial resources, professional assistance and support in redefining roles and developing new skills, as well as considerable time. These are the areas in which assistance is needed if full implementation of Public Law 94-142 is to be achieved."

We believe compliance efforts must be held up to this standard. Schools and State and local governments simply do not have the resources to carry out the Public Law 94-142 mandate, as now written. Unless several more billion dollars are appropriated from the federal government, "assistance designed to enhance local capacity to achieve FAPE should be emphasized and monitoring procedural compliance correspondingly deemphasized," as SRI suggests. The major focus must be on assuring realistic means of compliance, not just pointing out noncompliance. Efforts should be preventive, not punitive, if at all possible. OCR and OSE responsibility should be fostering compliance, not just catching non-compliance. This would require special training of OCR and OSE staff which could be incorporated in the Training Plan Activities. We do not believe the Task Force Report or Memorandum of Understanding clearly fosters this approach.

The Memorandum of Understanding calls for periodic evaluations of many of the new coordinated efforts between OCR and OSE. In this evaluation process, special attention should be given to assess whether the formal procedures established for information sharing are really effecting better compliance machanisms, or whether staff time is simply being consumed in procedural paperwork and formalities. We are reminded of the formality of Public Law 94-142's IEP process which is meant to guarantee an individualized education program but in many instances results only in a lessening of child-teacher contact time. Care should be taken in interagency coordination efforts to guarantee the process really accomplishes its intended purpose. Insufficient staffing could cause the system to break down.

OCR has an ability, at least in our contacts with the agency, which might be beneficially shared with OSE. Although this does not seem to be addressed in the Task Force Report, there is great need to be able to get quick and reliable answers to policy clarification questions related to 504 and Public Law 94-142. Full-time staff trained to answer such questions, whether from a teacher, paraprofessional, administrator, chief State school officer or anyone else, would broaden monitoring and enforcement capabilities tremendously.

Calls to OCR for information, interpretation and policy clarification have pleasantly surprised us with staff which will (1) take time to search out who can best answer the question at hand, (2) thoroughly research a question on their own, or (3) spend as much time as needed giving necessary background. Information was always much more difficult to get from the former BEH and policy interpretations would differ depending on who you talked to. An information service should be available to anyone through an identifiable office at both OCR and OSE, and technical assistance should be provided to states to offer comparable informational services.

Many abuses of 504 and 94-142 are maintained by claiming some other level of government is responsible for them and therefore nothing can be done to change them. An easily accessible source of information could help overcome violations made convenient by blaming a remote perpetrator.

Also, from our perspective, another major compliance issue is omitted from the Task Force Report. What protection could be afforded school and state education department employees who trigger complaints about non-compliance with Section 504 or Public Law 94-142? Now we still have instances of individuals who stand up for the rights of handicapped students being subject to harrassment and even trumped up insurbordination dismissal charges by their employers. Individuals often feel threatened and alone when considering revelation of illegalities related to these laws. Could technical assistance programs develop some means of protecting people who question practices related to 504 and 94-142?

On another topic, in Appendix E of the Report, there is a summary of priority compliance issues for enforcement purposes of Public Law 94-142 and Section 504. First, we believe a major omission is no mention of the need for substantial amounts of inservice training for all parties involved in education of the handicapped. Children with varying disabilities are now in least restrictive environment placements with personnel far less qualified to meet their needs than the trained personnel in the "more restrictive" placements from which they came. Provision of inservice training to assure that children's teachers and auxiliary personnel are prepared to work effectively with them is essential. This training should be given prior to placement.

Moreover, the chart provided in the priority issue compliance section totally misses hidden non-compliance issues. These, we have discovered, are very widespread but difficult to monitor. they can, however, do the greatest damage to implementation of Public Law 94-142 and Section 504. For example, neither the issues nor the sub-issues listed get at the following problems:

Staff being discouraged, if not outright forbidden, to refer children for evaluations because waiting lists are too long, evaluations too costly or placements unavailable;

Verbal warnings or commands not to make certain placements or request certain services on the IEP;

Abuses of the law which seemingly look like compliance, e.g., massive least restrictive environment placements based not on children"s individual needs but on the ability to save the higher cost of "more restrictive" settings (we also question whether a ranking of states on the number and percent of children served full-time in special education is a valide means of assessing the LRE requirement when such placements are to be made on an individual needs basis);

The use of state assessment data to predict actual personnel needs—we suspect state figures fall far below real needs because LEAs are not admitting many existing shortcomings in available staff.

We do support the Task Force recommendation that annual data compilation on the condition of education of handicapped children gathered from throughout the Department be published in a nationally accessible publication such as NCES' report, "the Condition of Education." We also endorse the Task Force's recognition that through joint planning efforts, needed data can be sought without substantially increasing data burden on educational agencies. Much more could be done to enhance compliance efforts through independent, empirically-based, research studies of actual implementation of Public Law 94-142 and Section 504, similar to the first year study of local implementation of Public Law 94-142 done by SRI International. Both OCR and OSE could fund such studies. Only empirical-based research will end the debate over whether implementation of these two laws is going well or poorly in the schools and over whether most handicapped children are indeed receiving a free appropriate public education or not. Such research, we feel, is essential to federal policy development and clarification efforts.

With regard to the policy section of the Memorandum of Understanding, we believe the process of identification of issues would be enhanced by allowing input of national advocacy groups either through meetings or written recommendations. As now written, OCR and OSE may limit issues to be addressed because there is no provision for external input, and then these agencies may or may not decide to notify the public of their intent to develop policy through publication of a Notice of Intent in the Federal Register. We believe a more open process would aid issue identification.

We are somewhat concerned about the time it may take to get policy developed or clarified. In the past, the process has been a rather long one, even with single agencies. Will there be any assurances that *V.B.2. Promulgation of Policy* procedures in the Memorandum will not serve only to lengthen recommendations? Both OSE and OCR should be guaranteed adequate staff and access to staff in other agencies as needed to keep the agreed upon coordinating efforts moving efficiently and quickly.

The Technical Assistance Plan seems very promising, including the four public meetings throughout the country to gain public perspective on the priority ranking of these identified needs. Again, we believe the final report to be produced by OCR and OSE recommending procedures for providing joint technical assistance relating to priority areas should include means of helping state and local education agencies obtain the resources necessary for compliance, recommendations on how to avoid common non-compliance errors, and explanations of specific criteria agency uses to judge SEA and LEA compliance with FAPE requirements.

Finally, we believe the Training plan is a very positive move but would like to make some additional suggestions. The need for full-time staff in each agency could answer questions related to implementation of both 504 and Public Law 94-142 has already been mentioned. This would special training. We were somewhat surprised that only 40 DAS staff were felt to require additional training in all of OSE. An inquiry might be made by this Committee as to why training needs within OSE are so limited.

Training sessions might be enhanced by the following additions:

OCR and OSE staff would both benefit from sessions with practitioners, including teachers, paraprofessionals and administrators, to better understand the operational world of the school and problems in trying to put theory or legislated mandates into actual practice;

Some means of ascertaining whether national, regional and state staff have a good grasp of legislative mandates they are charged to enforce might be developed and included in training sessions;

Sessions geared to improving uniformity of responses to questions of implementation related to compliance;

Sessions by SRI International and others who have researched implementation of these laws, if there are any others, in which common areas of non-compliance are contrasted with common areas of compliance for monitoring and enforcement staff.

In conclusion, we support the efforts of OCR and OSE to coordinate their activities in enforcement, data collection, policy development and technical assistance. We hope both agencies can really function in team relationships, each offering support to the other in a non-competitive atmosphere. The Task Force Report and Memorandum of Understanding are a step in the right direction. Yet, effectiveness in the four focus areas mentioned above will, in our opinion, require much more extensive efforts than those cited in these documents. The more efficient data collection developed, the more obvious non-compliance will become. This should be done. But the really tough questions, as we've tried to briefly illuminate in this testimony, lie in the realm of technical assistance and policy development. What is a free appropriate public education and how can we make sure schools are able to provide it should attract our greatest energies. The alternative is to show that schools, lacking adequate resources, have failed to fully meet the mandates of Public Law 94-142 and Section 504. This focus will not give handicapped children the rights they're being denied, it will only shorten the life of public education and draw people toward alternatives outside public schools promising the pot of gold at the end of the rainbow. It remains our firm belief that directed attention to real compliance problems of Section 504 and Public Law 94-142 and practical assistance to the schools, already making extensive efforts to comply, can assure the rights of all disabled children within the public education system. We therefore look forward to positive leadership efforts emanating from cooperative activities between OCR and OSE whereby the porimary focus is on fostering compliance rather than exclusively on pointing out non-compliance.

Ms. MORRISSEY. I would like to try something unorthodox. Does anyone in the audience have any questions?

[No response.]

Ms. MORRISSEY. I would like to ask one question that deals with the area of technical assistance.

Do you have any preference as to what areas of technical assistance from a substantive standpoint should receive immediate attention from OCR and OSE?

Ms. RAUTH. In-service training, it is critical.

Ms. MORRISSEY. In what? If you would identify some areas within the law that teachers need assistance with.

Ms. RAUTH. I am sorry to say it is across-the-board. You still have in your school systems throughout this country many teachers, particularly your regular classroom teachers, who barely have heard Public Law 94-142, as hard as that is to believe, even many who have heard of it but have no idea what it means or means to them and as a result it becomes a scare word.

If they have heard of it at all, it is something that is looming above their heads and they don't know what to expect.

When you have staff, whether it be the regular teacher or the special educator or anyone else, who at least perceives that they are unprepared to work with any child, no matter who that child may be, you have a serious problem because that lessens staff morale, creates resentment against whoever that child may be and that educator feels inadequate because we all have a sense of wanting to achieve or wanting to be able to do our jobs well.

And so not only do you have people who are responsible for carrying out laws which they are not familiar with so therefore they are not clear on what their responsibilities are which creates insecurities and resentment, but you have special educators who need additional in-service training.

Oftentimes we think that a person who has been trained in special education is qualified to teach any exceptional child. That is not the case. Oftentimes they specialize themselves. The teacher who has begun teaching the trainable mentally retarded child and who has been doing that for some years may not be qualified to work with the neurologically impaired child, and the transfer is not that immediate and training is needed.

Ms. **Morrissey**. Do you think this general problem is more acute at the secondary level?

Ms. **Rauth**. Absolutely. Secondary teachers are begging for materials, training, and most of your funded programs have very little to offer at this point. The emphasis has been on elementary level training.

Ms. **Morrissey**. Any questions?

Ms. **Vance**. You have raised a very important issue, which is broader than the hearing today. Broader even than what we have been focusing on in the task force.

Specifically, there are only so many dollars to go around. So many States have enacted tax limiting measures similar to proposition 13, and more of that is likely to come. Focus on the issue of civil rights protecting those rights of those children, how do you protect those rights when there are limited dollars? Do we back off with the law? Are there changes to be made in Public Law 94-142 to release some of the pressure that school officials feel in complying with the law?

Ms. **Rauth**. That is an excellent question, and probably the touchiest one I know.

No. 1, there are two parts to the answer to your question, and I don't assume to really have the whole answer.

First, in terms of what do we do in an era of limited resources when we are expanding educational services. Obviously, to expand services and yet maintain quality in those services for all children, handicapped and non-handicapped children, we have to somehow increase our pool of dollars for education.

Now, that is an educational job. I think we have to convince the public of the importance of good quality public education systems and at the same time make people perhaps more aware that that quality is directly tied to preservation of a democratic society.

I think it has to be a major priority of this country to adequately fund education for all children in our schools.

Second, and I see this happening already, and this is, I want to make it clear, this is the first time I have admitted knowledge of actual backlash, as it is called. I see people saying, well, we should bring court cases to show that we are not providing these services to nonhandicapped children, so we shouldn't have to provide these on the side.

My response is that we have to serve the needs of all children, and if we as a profession or if anyone else allows themselves to get into taking from one group to fully serve another, then we are all in trouble. That is not the direction we should be going. There is only one place to look realistically and that is to our legislation which provides the procedures to back up the rights guaranteed by section 504. Section 504 is a guarantee of basic rights.

We must figure out, with the resources available to us and with continued work to get more resources to do that job right, how can we eliminate some aspects of this law which are not working which are causing or costing us a lot of money and not producing the results possible.

We have taken what to some is an unpopular position, saying that we think within Public Law 94-142 we should take a second look at the IEP process or procedures. We believe in individualized education programs and we want that to continue. We are saying that the procedures, the paperwork of IEPs today are not resulting in what they are supposed to, they are not resulting in individualized education programs in many instances, that instead you frequently simply have a lessening of child-teacher contact time.

Let me give you a very specific example. A speech and hearing therapist may have a case or workload from 120 to over 160 children with whom that person works. Now, that person, you have to recall, in many school systems is responsible for making parental contacts for that many children because, you see, the funding is not available to allow some of these school systems additional administrative personnel to take care of all of these responsibilities. So they make the parental contacts.

They often are prepared with informal meetings prior to the IEP meeting to take a look at what information is available and to have done some background thinking on their own. And they attend the IEP planning meeting with the school representatives, parents, et cetera.

After this, in many school systems that same teacher is required to write up IEP for final approval by the parent or as agreed to by that planning group.

Now, by the time you do that for, take the minimum, for 120 different students, imagine how much time is left for that one speech and hearing therapist to actually work with children who need that therapy.

This is the type of thing that should at least be looked at. If it can be shown that what we are saying is not the universal case, we wish somebody will say it and we will say, fine, we are satisfied everything is working as it should.

We think there are procedural questions which could cut down dollars but at the same time bring more beneficial programs and really do more to protect in actuality the rights of handicapped children.

Ms. **Morrissey**. I think the illustration you gave is one that we deal with a lot and probably precipitated the draft IEP policy paper. But one other thing that has been reflected over the last year in testimony is it is very hard for Congresspersons to separate out what is the result of the Federal requirements in terms of a burden and what is the result of the State and Federal interpretations of the Federal requirements.

I think before we hasten to amend the act as it stands, that we consider the possibility of introducing some more efficiency or flexibility in interpretation at the local and State level first.

Ms. **Rauth**. I probably shouldn't say this, but at this late date I am going to. The problem has been that if we had strong leadership at the Federal level to try and help State and local governments and education agencies realize that we did not have to do certain things, or that they did not have to go clear to Z when going to B is more effective perhaps, if they would have taken the leadership to show that overregulation is detrimental and causing the kinds of problems you are suggesting, I might agree, but I don't think we have gotten that.

Instead it has been a tendency at each level to blame the other with no real leadership, and that has to stop or you are going to continue a system which is going to contribute to all of the many pressures. The result is going to be the demise of public education other than those who perhaps are wealthy enough to afford them.

Ms. **Morrissey**. In the case of the IEP, that the draft policy paper does the things that you suggest, the problems with the regulation and the Federal funds.

Ms. **Rauth**. I don't think the Federal Government has done all that it can and that they can shift all responsibility to the State and local levels because I think some of it lies in its own legislation and regulations. Initiatives could be taken at the Federal level which would have a very positive effect for the rights of handicapped students.

Ms. **Morrissey**. Don't you think the task force report may at least point us in that direction?

Ms. **Rauth**. I think it is very positive. We hope it will continue.

Ms. **Morrissey**. Thank you very much.

Ms. **Vance**. Thank you.

The hearing is closed.

[Whereupon, at 12:15 p.m. the subcommittee adjourned.]

FIELD HEARINGS ON THE EDUCATION FOR ALL HANDICAPPED CHILDREN ACT

THURSDAY, NOVEMBER 20, 1980

House of Representatives,
Subcommittee on Select Education,
Committee on Education and Labor,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:15 a.m., in room 2257, Rayburn House Office Building, Hon. Paul Simon (chairman of the subcommittee) presiding.

Members present: Representatives Simon and Erdahl.

Staff present: Judith Wagner, staff director; Patricia Morrissey, professional staff assistant; Cheryl Kinsey, research assistant; Dianna Cregger, executive secretary; and Terri Sneider, minority legislative associate.

Mr. Simon. The subcommittee hearing will come to order.

The focus of these hearings is the final report of the Secretary of Education's Task Force on Equal Education Opportunity for Handicapped Children. Yesterday Ed Martin, Assistant Secretary for Special Education and Rehabilitative Services, and Cynthia Brown, Assistant Secretary for Civil Rights, along with members of their staff, provided us with a summary of the task force report. Today we will hear from representatives of various groups who will react to the report in terms of its potential impact on children, parents, teachers, and State and local administrators.

Our first panel of witnesses consists of three members of the Education Advocates Coalition. This coalition's report provided the major impetus for the formation of the task force. They are Rims Barber, director, Children's Defense Fund, Mississippi Office; Janet Stotland, managing attorney, Pennsylvania Office of the Education Law Center; and Paula J. Hepner, coordinator, Advocates for Children of New York, Inc.

I will acknowledge my colleague from Minnesota. Do you have an opening statement?

Mr. Erdahl. I am just here to learn a lesson.

Mr. Simon. That makes two of us.

First we will hear from Rims Barber.

[The prepared statement of Rims Barber follows:]

PREPARED STATEMENT OF RIMS BARBER, DIRECTOR, CHILDREN'S DEFENSE FUND, MISSISSIPPI OFFICE

Mr. Chairman and Distinguished Members of this Subcommittee:

The Education Advocates Coalition appreciates your invitation to testify before this Subcommittee about the important issue of the Department of Education's efforts to develop effective, streamlined and efficient procedures to implement P.L. 94-142. The Education Advocates Coalition is a nationwide coalition of advocacy groups that work with handicapped children and their parents to obtain full implementation of the Education for All Handicapped Children Act (P.L. 94-142) at the local, state, and federal levels. The Coalition membership includes state-based advocacy groups working in eleven different states and a number of national advocacy organizations. These organizations represent individual parents and children and/or attempt to redress systemic class-wide violations of law. Members of this coalition come from California, Colorado, the District of Columbia, Florida, Illinois, Mississippi, New York, Pennsylvania, Tennessee, Texas, and Vermont. The Coalition has extensive experience with the implementation of P.L. 94-142 in the states and with the federal government's efforts to facilitate provision of services and procedural safeguards under the law.

On April 16, 1980 the Education Advocates Coalition submitted to this Subcommittee and to the Secretary of the Department of Education a report on federal compliance activities to implement the Education for All Handicapped Children Act. This report was based on the Coalition's intensive six-month investigation on the status of implementation of P.L. 94-142 in the various states in which the membership was located and on the

Bureau of Education for the Handicapped's (now the Office of Special Education) track record over the years. We found that hundreds of thousands of handicapped children nation-wide were being denied essential services because of state and local education agencies' non-compliance with P.L. 94-142 and the concomitant failure of BEH to enforce the Act. Some children were being excluded from basic services; others were placed in programs wholly inappropriate to their needs. Children were illegally isolated and segregated by race or handicap in special education classes. Lastly, throughout the country, parents were denied the partnership in educational decision-making that is the backbone of P.L. 94-142.

For example, 15,000 handicapped children in New York City were on waiting lists for evaluation and special education placement; more than 71,000 children in institutions or special schools received totally segregated programming and an additional uncounted number of handicapped children were in segregated settings in local school districts; 900 handicapped students in the San Francisco area identified as needing IEPs did not have them; more than 200 mentally retarded children in Texas institutions were provided no education at all; and black students across the country were placed in classes for the educable mentally retarded at almost three times the rate of white students. These are but a few examples. The Education Advocates Coalition report spells out in detail in ten separate appendices violations of federal law in ten major issue areas and points to the federal agency's failure to address these problems:

The Coalition report concludes that:

1) BEH's monitoring activities have repeatedly failed to identify and document serious statewide non-compliance with pivotal provisions of P.L. 94-142;

2) when serious non-compliance is identified, BEH has failed to take adequate steps to enforce P.L. 94-142 and bring states promptly into compliance with the Act;

3) BEH has failed to make clear federal policy decisions in a timely fashion, thereby fostering confusion and substantially delaying the efforts of parents and children to obtain needed educational services;

4) BEH staff assigned to monitoring, enforcement, policy development and technical assistance activities under P.L. 94-142 is too small and inadequately trained to fulfill the agency's compliance duties under the Act; and

5) BEH has failed to target its limited resources to resolve those implementation issues which are most critical to insuring that handicapped children receive adequate educational services.

Report, at p. 6. We would like a copy of this report to be made a part of this hearing record, if it has not been incorporated in any previous hearing records before this Subcommittee.

We want to underline that none of these specific deficiencies is an intrinsic part of the special education system or federal enforcement of it. No change in legislation or regulations is necessary to remedy these problems. The key is the commitment to implement P.L. 94-142 with effective enforcement by responsible government agencies.

Mr. Chairman, before we get to the principle issue before this Subcommittee today -- the Task Force report to the Secretary of the Department of Education -- we want to take this opportunity to say to the Congress once again and now for the first time to say to the new Reagan administration, that the Education for All Handicapped Children Act represents the considered judgment by state and local administrators, teachers, experts, parents and the Congress after years of hearings and deliberations, that it is in society's economic and moral interest to provide handicapped children a free and appropriate public education. All the evidence since the Act's passage reinforces this conclusion.

The plight of uneducated handicapped children who grow up into adults living unproductive lives in institutions or out on our streets represents a tremendous cost to our society. The data on juvenile delinquents who have undiagnosed learning disabilities and whose anti-social behavior may arise from frustration with the public school's failure to educate them properly, represents yet another drain on our society. This is a bipartisan issue; America's children are the foundation for the future. And education is the most important part of this foundation. The record before this Subcommittee repeatedly shows that when handicapped children are provided with an appropriate educational program, they grow into adults who contribute fully to the economic and political life of this country.

Each of the provisions of P.L. 94-142 was carefully considered and crafted as an essential part of the free appropriate public education required for handicapped children. This Subcommittee is to be congratulated for its excellent work in developing this legislation, and, as the record shows, there has been precious little suggestion from state or local governments that any aspect of P.L. 94-142 should be eliminated or changed. In fact, the chorus from parents, local school boards, and state agencies has been uniformly in two parts: 1) provide this law full funding, and 2) insure consistent, effective, timely and efficient federal enforcement. It is our experience across the Nation that P.L. 94-142, when fully implemented, is a tremendous force for keeping children at home with their families and saving society the tremendous and wasteful expense of institutional care. This law is pro-family and cost-effective. We heartily urge the new administration and the new Congress to aggressively pursue full implementation of this law.

We are encouraged by the Department of Education's October 15, 1980 "Final Report to the Secretary of the Task Force on Equal Educational Opportunity for Handicapped Children." We believe that this report goes a long way toward development of agency policies and procedures which are efficient and effective. We are heartened by the fact that the Coalition's ten major areas of non-compliance have been recognized by the Department as areas of major priority in its activities. We are also heartened by the Department's positive response to the concerns about its own activities brought to light by the Coalition's report. It appears that the Department has built on our comments and those of such other organizations as the Council of Chief State School Officers and is clearly committing itself to a course of administrative reform.

The Task Force report and Memorandum of Understanding proposes an end to duplication of efforts and conflicting determinations by the Office of Special Education and the Office of Civil Rights. States can now rest assured that one unified determination by the Department of Education will be made as to the adequacy of their program plans and as to the outcome of individual complaints. Moreover, coordination between the two offices will help insure more efficient use of limited agency staff and resources. We endorse this. We also endorse the report's delineation of crucial issues and identification of major information gaps. Further, the publication annually in the Federal Register of an OSE compliance activity plan for the coming year is crucial.

However, there are a number of important respects in which the Task Force report is either unclear or inappropriately silent. In discussing these issues, our discussion will follow the format and recommendations of the Education Advocates Coalition report. To be brief, we will not repeat those recommendations here, but incorporate them by reference.

I. MONITORING

a. Collection of Data

Appendix E of the Task Force report acknowledges the need to collect data to address priority compliance issues.

However, neither a commitment to collect the necessary data nor a strategy of how such collection will be undertaken is provided.

b. Compliance Triggers

The need for compliance "triggers" was extensively discussed in the Coalition's report; it was pointed out that predetermined statistical measures of the existence of a problem, i.e., statistical threshholds which indicate something systematic and inappropriate may be occurring, are essential. Absent such "triggers", the statewide scope of a problem or the underlying causes of the problem will remain undisclosed. As pointed out in the Coalition report, such "triggers" can be used to help OSE establish monitoring priorities and justify requiring state and local agencies to come forward with more extensive information than that collected initially. (Note: such triggers would not be conclusive proof of the existence of a violation of law, but only the beginning of the inquiry. Legitimate reasons may surface upon investigation.)

The Task Force report, while acknowledging the need for such compliance triggers, fails to set up a process by which such triggers can be developed; similarly, no commitment is made to undertake research in order to validate the use of triggers. Nor is it specified what types of data will be reviewed in each area of non-compliance when an in-depth review of the underlying problems is undertaken as a result of use of such a trigger.

c. On-Site Visits

As pointed out in the Coalition report, OSE's on-site visits, called Program Administrative Reviews (PARs), have failed in the past to get beyond paper compliance to uncover the real compliance problems. Nevertheless, the Task Force report does not specify new procedures for conduct of on-site PAR visits.

d. State Education Agencies (SEAs) — Data Gathering Responsibilities

The Task Force report does not specify the responsibility the Act places on SEAs to collect the data necessary for their own mandated reviews. SEA procedures are not discussed, though in the past they have not been adequate either in reality or in the annual program plans. As a result, state monitoring and enforcement is sporadic. Not only is this a failure to implement a statutory requirement, OSE is neglecting an opportunity to mandate state collection of data which would facilitate OSE's own compliance reviews.

2. ENFORCEMENT

The Task Force report fails to specify a procedure for OSE systematic statewide compliance (as opposed to individual complaint) reviews. The use of data, other information and on-site visits is not tied to any time lines or specific enforcement steps. In addition, compliance is not tied to either annual release of federal funds or to triennial approval of program plans. (The law forbids release of funds for programs that are not in compliance, and annual release of funds by OSE should be linked to the state's performance record.) In addition, there is no commitment to improve the program plan approval process in the future, for example, by requiring detailed state policies and procedures (not merely assurances) in areas of non-compliance.

3. POLICIES — TIMING AND PROCESS

The Task Force report indicates that certain policies have been developed and are awaiting final approval. These policies should be issued by the Department without any further delay. There has already been much public discussion of these policies and they are needed in the field. There is simply no excuse for the Department not to issue them today.

4. STAFFING

The Department of Education has a statutory obligation to insure full implementation of P.L. 94-142. Where staff and resources are limited, high priority must be given to compliance efforts. The Task Force report is unclear about whether resources will be reallocated to bolster the small OSE compliance staff and whether there are long-term plans to increase the size of that staff for systematic compliance reviews. The link-up to OCR for complaint resolution, for example, is applauded as an efficient melding of the Department's resources.

CONCLUSION

In conclusion, the Education Advocates Coalition believes that the Department of Education has taken a long stride down the road to effective and efficient implementation of the Education for All Handicapped Children Act. However, there is more distance which needs to be traveled before the federal government will have an effective compliance mechanism in place. In this testimony we have pointed to a number of areas which need strengthening. We hope, and trust based on the Department's efforts so far, that the process which has begun will continue.

We believe it is important for this Subcommittee to watch this process to insure the Department under the direction of the Reagan Administration continues to make progress in the implementation of this important statute. If the new Administration is genuinely serious about implementing pro-family and cost-effective programs, it will want to continue the progress the Carter Administration has recently made in improving special education opportunities for handicapped children.

In the many years we have been working with the federal government on the education of handicapped children, it has repeatedly been the strong, clear and direct actions of this Subcommittee, acting in its legislative and oversight capacities, which have been a continued source of protection for the Nation's handicapped children. We applaud this Subcommittee's efforts in the past, and look forward to continuing our work together to build on the progress that has been made so far.

STATEMENTS OF RIMS BARBER, DIRECTOR, CHILDREN'S DEFENSE FUND, MISSISSIPPI OFFICE; PAULA J. HEPNER, COORDINATOR, ADVOCATES FOR CHILDREN OF NEW YORK, INC.; AND JANET F. STOTLAND, MANAGING ATTORNEY, EDUCATION LAW CENTER, PHILADELPHIA, PA.

STATEMENT OF RIMS BARBER, DIRECTOR, CHILDREN'S DEFENSE FUND, MISSISSIPPI OFFICE

Mr. BARBER. We appreciate the opportunity to come before this committee. We want to reflect on what is happening in our States as representative of States across this country. As I go around talking to school superintendents and other school administrators and parents, one of the chief things I am hearing from school superintendents today is that they are worried about costs for heating buildings, and it takes a while for me to get them to focus on things like handicapped education. I think that is not to put them down in any way, but it is to acknowledge the pressures that are on them from a variety of sources.

They do not focus on education for disadvantaged and handicapped children very easily. We know what happened before there was a law, before there were regulations for Public Law 94-142, that there were thousands and thousands of children who got nothing.

Handicapped children were simply overlooked. In our State, which is a small State, there were 25,000 children who were handicapped who deserved something. Half the school districts had no special education beyond the elementary grades. Thirteen school districts just did not bother with handicapped education at all. Half the school districts had no speech therapists. There was twice the dropout rate for those kids who did get into special education as for those who stayed in regular education. Things were terrible.

But because a law was passed, because regulations were promulgated, and because there were advocates out there who could use that law, thousands of children today are now getting an appropriate education who would not have gotten it before. Because people have handles from the Federal Government they are able to push their own rights and go beyond how am I going to pay the heating bill this month to focus on an appropriate education for kids. That is an important thing that happens.

However, it is all not well. As we have pointed out in our April report, which you have all been given a copy of, the problems persist. The Bureau of Education for the Handicapped, now Special Education Services, fails to enforce rigorously, of what the Federal rules are; States fail to comply, fail to monitor and enforce the regulations which they have signed assurances about. The results are, children are denied essential services, children are isolated and segregated out behind the regular school building. Parents are denied the partnership in education that they really need. We outlined some of those problems in our April report to you. The committee should be commended on holding these hearings, trying to form a good, congressional base across party lines, and hopefully into the new Congress, that will support this important act preserving the integrity and the right of the Federal Government to be the protector, the insurer of rights for handicapped kids who would otherwise get lost in the lurch.

The program can work. It is beginning to work in many States. With full funding it can work even better. With consistent, effective, and timely Federal enforcement, it will surely work.

The task force report which you have under consideration and Memorandum of Understanding is an important first step. It holds promises that we will end the duplication between two parts of the Department of Education. I am hopeful about that. I have seen in the past that it has not worked, that we have had the Office for Civil Rights come in and look at a couple of districts in our State and find them wanting and not coordinate their negotiations for remedy with the OSE. We have to have that cooperation in order to end duplicative words we hear from Washington. You have to hear one simple, clear voice from the Federal Government.

We can have a unified and consistent policy based on this Memorandum of Understanding. We can more efficiently utilize the resources that the Department has, and we are pleased to see that they have, as a result of our report and in the memo, in the task force report, acknowledged the gaps that exist in policy determination and in data collection. However, we are here to stress today that that task force report and memorandum of understanding is an important first step but does not go far enough. It does not have a strategy for data collection. In order to get the kind of information they need to enforce this law, they must develop a clear strategy for collecting and analyzing the data that is available.

For example, they get a lot of information in statewide averages in the Department of Education that seriously overlooks and clouds some of the problems. We have looked at our data in Mississippi because we have a court order giving us the right to do it and we have found that while maybe the statewide average of the differential between black and white children being overlabeled mentally retarded is not all that serious, there are significant school districts; mainly the problem is limited to the white-majority school districts where they are overclassifying black children as mentally retarded. You can only find out those things if you have a good data-collecting system and a good way to analyze the data you have.

They must insist the States maintain data which will enable the Government to have a good look at the entire State to analyze the practices that are going on.

In our report in April, we asked for triggers. The task force acknowledged that triggers are a good thing, but they did not give us a process for setting up triggers. We think in your oversight capacity you need to assure they do move forward and establish triggers showing areas of probable noncompliance, areas of probable program problems.

In the task force report, there are no new procedures for onsite visits. It says we are going to do more onsite visits and we will publish our schedule. That is fine, but we need to know what new procedures will occur. We have watched them come into States and not do a very thorough job of onsite visits. Our staff in Mississippi has accompanied State department people on onsite visits and there is a tremendous difference in how you ask the questions, how you begin to probe the problems a district might have, whether you are probing for compliance or for technical-assistance purposes.

You need to ask the right questions; you need good, solid procedures for investigating.

We need, again, the time lines, specific enforcement steps for compliance reviews similar to what there is for complaint review. In the task force report, there is no overall statement of how they will go about setting up remedies for problems that are found in compliance reviews, other than the cycle of approving the State plan.

Last, we would like to touch on one other item, that is that they acknowledge their policies, important policies which have been developed within the Department but have not been released.

They said to us in the October 15 task force report that they would soon be released, but they are not out yet, and now we hear all things are on hold. Policies need to be released and need to be released now. We need to be able to get timely response from the Department of Education.

This summer I had a problem with a child who had gone to preregistration in the spring like everybody else in that school district and was denied some services, or told he would be denied the services come fall. This was a 6-year-old. I wrote to the Bureau of Education for the Handicapped and said can we have a hearing, I had asked the State for a hearing and they said, no, you cannot apply for a hearing until the first day of school, when the child is eligible for school at age 6. We have yet to have a response. That was last summer. The lack of timely response by the Department hurts us all and puts the parents at an extreme disadvantage.

I thank you very much, and we now have Paula Hepner.

Mr. SIMON. We do have time constraints. If witnesses wish to enter their statements in the record and summarize them, that would be fine, or you may proceed as you wish.

STATEMENT OF PAULA J. HEPNER COORDINATOR, ADVOCATES FOR CHILDREN OF NEW YORK, INC.

Ms. HEPNER. My name is Paula Hepner. Advocates for Children of New York is one of the 13-member groups forming the Education Advocates Coalition, a nationwide coalition of advocacy groups working with handicapped children and their parents to obtain full implementation of the Education for All Handicapped Children Act at the State and local level.

During the past 10 years, Advocates for Children has represented over 7,000 individual children and parents on a full range of educational matters. Of the more than 1,500 cases AFC handled in 1979-80, 65 percent were students identified as being in need of special education and/or related services. In addition to representing young people individually and seeking to influence class issues and policy change, AFC was granted Amicus standing in two landmark special education cases in New York—*Jose P.* v. *Ambach* and *Lora* v. *The Board of Education*. Through participation in this litigation, AFC has been able to bring its field experience into the process of helping to design a special education system which will truly address the needs of all handicapped children throughout the city of New York. We thank you for this opportunity to communicate directly to you our comments on the final report to the Secretary of the Task Force on Equal Educational Opportunity for Handicapped Children.

We would like to recognize the obvious commitment of Secretary Hufstedler in seeking to remedy the problems and violations identified in the April report of the Education Advocates Coalition. The Memorandum of Understanding between the Assistant Secretaries for Special Education and Civil Rights creates a working relationship in which OCR and OSE can develop and implement policies, procedures, and practices that will insure handicapped children are accorded their right to a free, appropriate, public education. But as the task force report to the Secretary clearly states, many recommendations of the Education Advocates Coalition were not incorporated into the Memorandum of Understanding. We would like to take this time to focus upon the recommendations which were omitted in order to stress their importance and urge their priority as the Memorandum of Understanding is expanded in the future.

The coalition's April report cited 10 areas of noncompliance with the mandates of Public Law 94-142, none of which is intrinsically the fault of the special education system, the magnitude of what the law decrees, or the skyrocketing cost of special education. It was and still is the coalition's belief that the Education for All Handicapped Children Act does not promise more than the Federal Government can deliver. We believe that the key to the achievement of this law's objectives in a cost-effective way is aggressive monitoring and enforcement by responsible governmental agencies, not the courts.

Our coalition envisioned the Department of Education taking an active and persistent role in performing its monitoring functions and when serious noncompliance is identified, taking immediate and adequate steps to enforce the mandates of the law. To do this, the coalition recommended—

That the Department of Education require States to keep quantitative and qualitative data designed to identify the existence and nature of compliance problems as well as document the scope of the problems statewide;

That the Department use the information obtained in individual complaints from parents and advocacy groups as a basis for initiating indepth investigations of particular compliance issues; and

That the Department develop new procedures for conducting onsite program reviews that are oriented toward a State's practice rather than its policies.

The task force report suggests recommendations touching on each of these issues in a concrete way, but the Memorandum of Understanding is seriously devoid of specifics to implement them. Random sampling techniques and periodic site inspections will still be used by OSE and OCR to investigate compliance, but no new procedures for conducting the visits have been developed. Consequently, the scope of their inquiry will continue to be disproportionate to the handicapped population identified, the geographical distribution of handicapped students being served, and the size and number of school districts involved. In practical terms, this means that New York State can be found in compliance with the mandates of the Education for All Handicapped Children Act without reviewing the conditions of special education programs in New

York City, where currently there are 599 students awaiting evaluation more than 30 days, 4,800 students waiting more than 60 days for placements in self-contained classes, and 2,700 students unserved in resource-room classes due to the inability of the board of education to recruit and hire qualified special-education personnel.

With regard to individual complaints, OSE and OCR have agreed to establish a procedure for more systematic disposition of complaints, including a mechanism for intraagency referral, but the essential detail included in the complaints that can offer firsthand insights into a pattern or practice signaling noncompliance, the memorandum states only that using the information for this purpose is "contemplated."

Central to the Department's responsibility of insuring compliance with Public Law 94-142 is the Department's duty to interpret the law's requirements and issue policy statements to assist State and local education agencies in meeting their obligations. Nowhere is the Department's negligence more objectively quantifiable than in the area of policy development.

Since 1977, parents, advocates, and State education agencies have been seeking clarifying guidelines and policy directives on issues left vague by the regulations, yet critically needed policy directives in at least seven major areas have not been forthcoming.

The task force report recommends that a coordinated process of policy development be adopted by OSE and OCR and immediate action on a number of key policy issues. The Memorandum of Understanding, however, refers only to an exchange of information regarding pending issues of major significance and proposed dispositions of complaints raising key policy questions. There is no indication of when any of these policies will be implemented, nor what process will be utilized in speeding up the implementation of future policy statements. Without time frames, the promises are worthless.

It cannot be doubted that the failure of the Department to exercise its responsibilities for policy development has led to the filing of many unnecessary lawsuits around the country, forcing Federal judges to do the Department's work. Lawsuits have been filed on six of the seven outstanding policy issues.

From 1979 to 1980, 25 district court decisions were handed down on these issues, and 4 opinions from circuit courts of appeal were rendered. On the question of related services there have already been six cases, and on the matter of discipline eight cases have been filed, and AFC expects to file the ninth case before this semester is over because New York's State law has no procedures for the suspension of handicapped students, and New York City's procedures are unconstitutional under the holdings of State and Federal courts around the country.

In concluding, we are mindful of a point we made to this committee in May when we forcefully said there is no justification for legal services organizations having to bring upwards of 30 lawsuits where judges instead of the governmental authorities ultimately end up doing program reviews, documenting areas of noncompliance, issuing policy statements, and drafting remedial orders. Despite recent public statements and editorials to the contrary, laws and regulations that seek to secure education entitlements to those children from whom these entitlements have historically been denied are not the enemy. But they and we, their advocates, become so when judges, lacking the power to appropriate Federal dollars to support these laws' mandates, exercise the power of their position and order State and local governments to do what the law required without sufficient resources. We are fortunate that resources to carry out the tasks in the Secretary's work plan are available to OSE and OCR, however. Although we have not yet seen the November 1 memorandum on additional resource needs, we wish to remind the Department that their work force can be increased exponentially by relying on community agencies that are involved with the educational system daily and know the extent to which programs and services comply with the law.

Mr. SIMON. Thank you.

The final witness on this panel is Janet Stotland from the Pennsylvania Office of the Education Law Center.

[Prepared testimony of Janet Stotland follows:]

PREPARED TESTIMONY OF JANET F. STOTLAND, ESQ., MANAGING ATTORNEY, EDUCATION LAW CENTER, INC.

Good Morning. My name is Janet F. Stotland, and I am the Managing Attorney of the Pennsylvania Office of the Education Law Center, Inc. ELC is a non-profit, public interest law firm which provides free legal assistance to parents, children, and consumer advocates who encounter difficulties with the public school systems in Pennsylvania and New Jersey.

ELC is a member of the Education Advocates Coalition and we endorse the statement of the Coalition which was presented and incorporated into the record. My comments this morning, however, are based on the cumulative experience of the Education Law Center staff working in Pennsylvania over the past four years. Our office operates an open intake system which has allowed us to have direct contact, on a yearly basis, with many thousands of individual handicapped youngsters and their parents who are seeking to enforce the rights guaranteed by P.L. 94-142. In addition, ELC provides back up support to lay and legal advocates for that population. We have also had extensive contact with the state educational agency and intermediate units and school districts throughout the state.

In the course of our efforts to secure the rights of these handicapped students we have frequently had recourse to state and federal administrative enforcement mechanisms. When such processes have failed, as has historically been the case, we have been forced to litigate these problems in the federal courts.

With this background serving as the data base, the two points I would like to urge this morning can be summarized as follows:

-- First, P.L. 94-142 is a rare and extraordinary piece of legislation in that it works in practice as well as in theory.

-- Second, while enforcement problems still exist at the federal level, we are seeing the first signs of coordinated, more vigorous and badly needed enforcement from OSE as well as OCR. Unfortunately, this has not been the case with the state enforcement procedure.

P.L. 94-142 Works

P.L. 94-142 establishes a framework of substantive and procedural requirements which guarantee handicapped children and young adults a reasonable level of services and safeguards while allowing states and localities a wide range of options as to how these rights are to be delivered. An example of the Act's flexibility is the requirement that each handicapped child receive an appropriate education program which is "free." The Act and regulations allow state and educational agencies to meet this mandate through expansion of public alternatives, use of private sector resources, or through coordination with other state agencies such as departments of health and welfare.

Unfortunately, state and local educational agencies in Pennsylvania and elsewhere have not taken full advantage of this flexibility to provide needed services efficiently and cheaply.

In the course of more than ten years as a public interest attorney, I have worked with major pieces of social legislation in such areas as welfare, social security, public housing, and urban renewal. I know how unusual it is for major new legislation to achieve intended goals. P.L. 94-142 is a balanced and workable law which has begun to result in the provision of badly needed services to handicapped children and young adults. Moreover, it accomplishes this goal with a minimum of intrusion into the operations of state and local education agencies.

Although ELC staff are frequently in positions adverse to those of educational officials, these disputes are virtually never over the advisability of the requirements of the Act, either from an educational or social perspective. Rather, we find that disputes are most often created by a concern common to consumers and providers alike -- the lack of sufficient federal financial support.

Enforcement Efforts are Still Halting, But Are Improving

Effective administrative enforcement of P.L. 94-142 must exist at both the state and the federal level. The relevant federal agencies are, of course, the Office for Civil Rights and the Office of Special Education; the original Coalition Report focuses on the failures of these agencies. Since the date of that Report and the establishment of the Task Force, ELC staff have seen slow but visible improvement at the federal level.

For example, Pennsylvania has a state law which limits the amount which the state and local educational agencies will pay for a handicapped child placed by those agencies in private schools. The statutory cap is not variable, regardless of the needs of the individual child, and has resulted in charges to parents and in the total denial of appropriate special education programs to some children.

In September, 1979, ELC filed a class action administrative complaint regarding this problem with OCR Region III, and, shortly thereafter, with the state Office of Regional Review. When the state agency failed to respond, in early December, 1979, an identical complaint was filed with the Bureau of Education for the Handicapped.

Silence then reigned on all fronts. Because our clients were faced with a bill for over $10,000 per year for their child's "free" appropriate education, we initiated a class action litigation in March, 1980 in federal district court in the Eastern District of Pennsylvania. This action, captioned Gittelman v. Scanlon, is still pending.

In April, 1980, OCR issued a ruling on the Complaint finding Pennsylvania's policy and practice in violation of §504; when Pennsylvania failed to bring itself into compliance, OCR referred the matter to its central office for enforcement. On September 23, 1980, we again contacted BEH (by that time OSE) and pointed out to them that they were about to approve Pennsylvania's Plan under P.L. 94-142 at the same time that OCR had found the State to be in violation of §504.

This final letter produced the first favorable response ever obtained by our office from OSE or its predecessor. On October 10, 1980, OSE contacted Pennsylvania and informed the State that it would not approve the proposed plan until OSE received assurances that handicapped youngsters would receive free and appropriate programming regardless of the statutory maximum. While the ultimate outcome is still uncertain, OSE's most recent action is the first visible effort of OSE/OCR coordinated enforcement. Hopefully, the procedure set up by the Task Force will produce such results more frequently and with less prodding.

On the other hand, the Task Force Report failed to address the issue of enforcement on the state level. Pennsylvania's state enforcement mechanism, the Office of Regional Review, has not shown the improvement we have seen at OSE. Since it is our belief that such local enforcement agencies are key to the successful operation of the Act, we would urge the Task Force to direct more attention to bolstering such agencies in Pennsylvania and elsewhere.

Parents and their advocates must have available, on the local level, the effective complaint procedures called for in the Act. OSE should approve only those state plans which provide for such procedures, should collect and review data on their effectiveness, and should take action when the data indicates that a state is failing to meet this requirement of the Act.

Thank you for this opportunity to bring these matters to your attention.

STATEMENT OF JANET F. STOTLAND, MANAGING ATTORNEY, EDUCATION LAW CENTER, PHILADELPHIA, PA.

Ms. STOTLAND. Good morning. My name is Janet F. Stotland, and I am the managing attorney of the Pennsylvania Office of the Education Law Center, Inc. ELC is a nonprofit, public interest law firm which provides free legal assistance to parents, children, and consumer advocates who encounter difficulties with the public school systems in Pennsylvania and New Jersey.

ELC is a member of the Education Advocates Coalition, and we endorse the statement of the coalition which was presented and incorporated into the record. My comments this morning, however, are based on the cumulative experience of the Education Law Center staff working in Pennsylvania over the past 4 years. Our office operates an open-intake system which has allowed us to have direct contact, on a yearly basis, with many thousands of individual handicapped youngsters and their parents who are seeking to enforce the rights guaranteed by Public Law 94-142. In addition, ELC provides backup support to lay and legal advocates for that population. We have also had extensive contact with the State educational agency and intermediate units and school districts throughout the State.

The basis for my comments this morning are as to the services we perform for individual parents and children. We have done this for some time. For the past 4 years, we have represented literally thousands of these children and their parents, and we have spoken with literally thousands of school districts and the Department of Education.

Since we do try to resolve things easily, if possible, we often have recourse to the Federal administrator or State administrator mechanisms in order to resolve these complaints.

It is a sorry state, as reflected by the previous witnesses. It is easier to get from Federal district courts than appellate courts. That is the problem we raised with you in the original report. The two points I would like to make, however, most importantly, are two things: First of all, Public Law 94-142 is a very unusual thing. It is a piece of legislation that works. It works in the field where people are, where children are who need services. Second, this is kind of a bright spot, at least my experience is that since the original coalition report and since the task force has done its work, I have seen some improvements in Pennsylvania in the response we have received from the Federal agencies. I by no means wish to indicate our problems are over. Something is certainly better than nothing, which is better than when we testified before you in May, when you, Mr. Simon, asked what happened when you file a complaint with BEH. I replied, I would not know, I had not heard from BEH.

Public Law 94-142 established a framework of substantive and procedural requirements which guarantee handicapped children and young adults a reasonable level of services and safeguards while allowing States and localities a wide range of options as to how these rights are to be delivered. An example of the act's flexibility is the requirement that each handicapped child receive an appropriate education program which is free. The act and regulations allow State and educational agencies to meet this mandate through expansion of public alternatives, use of private-sector resources, or through coordination with other State agencies such as departments of health and welfare. While that mandate may be thought of as a specific one and is sometimes referred to as inappropriate intrusion of the Federal sector into the State framework, in my experience the problem is not with the law, the problem is with the State and local agencies' unwillingness to utilize the flexibility that the act has that they actually have.

An example, I am counsel in a litigation called *Armstrong* v. *Kline*, which in Pennsylvania established the right of certain handicapped children to go to school in excess of the 180-day school year.

When the lawsuit came down and it became an obligation of the State of Pennsylvania to provide this for students, I spent a good deal of time traveling through the State talking to providers, urging them to utilize the resources already available to them. Programs that were primarily recreational, for example, set up by the mental health unit, structures already there, already financed, already operational.

I said why do you not, for example, put a special education teacher in that system already there, you will not have to pay for the building or pay for all the other things already picked up and provided by that department. In some parts of the State that was done. Some high-quality programs were available, which stemmed the tide of that wasteful regression in learning that had gone on in the past.

Alternatively, in other parts of the State, I experienced school districts literally turning down offers from their companion agencies and saying, "Oh, no, we cannot commingle; we cannot deal." All the time saying, "Of course, this thing costs a fortune; how overburdened we are."

My point really is in this regard: that Public Law 94-142 provides that structure but it does not mandate with precision how the services are delivered. I think there has been a lack of creativity in meeting that mandate.

My second point, we are seeing some progress. As I told you, before *Armstrong* v. *Kline* was litigated the task force report focused on the policy development. They promised they would submit a notice to publish. I do not understand.

After 3 years we may get a notice of intent to publish, if we are lucky. I have had one good experience. We have in Pennsylvania a State section that places a cap on the amount school districts in States will fund for a private facility which educates the handicapped child at the request of the school district. If the cost is above the statutory maximum, the program is not free. We turned to BEH a year ago and asked them to resolve this program. We turned to OCR and asked them to resolve the problem. We heard nothing.

That was originally filed, I think, in September 1979. We were of course faced with clients with a very real problem. So as of March of 1980, we had no choice. So we filed in district court another case that is pending.

In April of 1980, we heard for the first time from OCR, which ruled the statutory maximum illegal, and it mandated that Pennsylvania come under compliance. Meanwhile, we have heard nothing from BEH all this time.

We contacted OSE at this point and said to them, if OCR is about to cut off funding because Pennsylvania is out of compliance, tell us why you are proposing funding under Public Law 94-142. It must be free under both acts.

Finally, in October 1980, we get our very first response from OSE in response to a complaint. We received a copy of a letter from the agency to the State saying their plan will not be approved unless they provide the necessary assurances this problem will be dealt with and the children will receive a free appropriate education. From our perspective, while it took a long time and much prodding and certainly could not be done by a parent or someone who did not have our expertise, we did see progress for the first time. We would like to see more, and it is our hope the task force report will be the beginning of such efforts.

Mr. SIMON. Thank you very much.

In a matter pending before Congress, the reauthorization of legal services, an amendment is going to be proposed that will say that legal services cannot be used in education-related matters. What would be the impact of that?

Ms. STOTLAND. I can think of nothing more devastating. I have a history of 7 years as a legal service attorney before this job, so I have experience with both legal services as well as in this job. I would say that particularly in the area of the rights of the handicapped that whatever rights are secured under State or Federal law were first available to those with resources and still are available to those with resources. Medical support, evaluators, and lawyers. That is probably the most pervasive problem around this act.

It is complicated and in many cases needs lawyers and advocates to help out. If legal services is not available to provide support in this area, it would be a deprivation of the only way poor people can have any chance of ceasing to be poor, which is an opportunity for an appropriate education.

Mr. SIMON. Do either of the others wish to comment?

Ms. HEPNER. I would just like to say, one of the specific findings in one of the landmark cases was that private schools were overloaded predominantly with white, middle-class children whose parents could use lawyers to get them into approved private schools. If the legal services amendment goes through, we will be perperuating the kind of discrimination found in that case.

Mr. **Simon**. Miss Hepner, can you specify the seven areas where policy directives have not been forthcoming?

Ms. **Hepner**. Criteria for putting children in the less restrictive environments, use of IQ tests, procedures for standards to appoint surrogate parents, which by the way is the only policy statement not litigated yet, the policy from the Department of Education. What is an IEP. I mentioned the suspension issue. I mentioned the scope of related services. You will see the six cases involve whether the State should be paying for such things as catheterization, now in California, tongue-thrust therapy, and finally, the Armstrong matter, with the provision for a more than 180-day program.

Mr. **Simon**. Mr. Barber, you mentioned specifically about not getting a response to a letter you wrote to OSE this summer. Is that typical?

Mr. **Barber**. That was given as a typical example of a more minor matter that certainly they should have been able to clear up in a relatively short period of time.

Mr. **Simon**. Have you received an acknowledgment?

Mr. **Barber**. Acknowledgement, that is it.

Mr. **Simon**. You mention that at the Federal level we are not doing a good job in onsite visits. What are we not doing that we should be doing?

Mr. **Barber**. I think we would be glad to respond to you in writing, specific kinds of ways in which onsite visits can be improved. I would rather do that than indicate orally.

Mr. **Simon**. I would appreciate you doing that, but could you give us one or two specifics?

Mr. **Barber**. One of the things they have to do is go beyond the paper compliance. They have to go to the actual practices. In order to do that, they need the States to collect data in certain kinds of ways so that they can see how the State operates in the problem districts, what is the relationship of the State not to the best district in the State or in general, but how does that State relate to a district where there are significant problems either because they are a poor district and do not have the resources, or because they are a recalcitrant district that just tells people to go away?

The final ingredient, I think they need to involve parents. There needs to be a procedure that gets them talking to parents of handicapped children. If all you do is talk to State officials and a few hand-picked superintendents and do not talk to any parents, you have come away with a picture that is a snow job, not a review.

Mr. **Simon**. They are not talking to parents now?

Mr. **Barber**. Generally not.

Mr. **Simon**. You also omitted teachers.

Mr. **Barber**. They pick out three or four districts and go to those districts, and they will talk to some teachers in those districts.

Mr. **Simon**. Finally, you talk about the need for triggers. Do you mean that if for example you have 6 percent black population, and

12 percent black population in classes for the mentally retarded, is that the kind of trigger you are talking about?

Mr. BARBER. We are not talking about something that finds somebody guilty by looking at a statistic. We are talking about indicators, certain triggers that make you look at program issues. You mentioned one of them, the racial composition. We have some school districts where 20 percent of all black children are in classes for the retarded. That does not mean that district is doing everything wrong, but it certainly is an indicator that one needs to look at their evaluation process to see what they are doing. Similarly there are triggers as to least restrictive environment. You can establish a trigger, a number—let us look at these districts because these appear to be out of line with what is average, what we see in the rest of the State or in the rest of the country. It is those kinds of triggers that would then force you to look at policies and procedures to see whether they are doing something right or something wrong. Those are needed.

Mr. SIMON. Mr. Erdahl.

Mr. ERDAHL. Thank you, Mr. Chairman.

It seems we have heard again from a good panel this morning. If I could summarize, you are telling us that under Public Law 94-142, we need to be sure there is full funding, full compliance, proper enforcement, and consistency. Maybe our procedure here will hopefully strengthen moves in that direction.

Mr. Simon has already touched on some of these things, but a couple of you mentioned the need for new procedures and onsite visits. What are some of the new procedures that are needed?

Ms. STOTLAND. I do not feel prepared to speak to that across the board, although I think the more detailed critique the coalition will put out, which is a procedural report, will focus on that. One procedure I would like to see strengthened, however, is a focus of the onsite visit and of the plan review on the State mechanism for enforcement.

Public Law 94-142 requires each State do its job to assure that the law is complied with. It is not just the Federal Government's job. Each State must set up a monitoring mechanism. The truth of the matter is that people's grievances ought not to have to be raised in Washington to be heard.

Parents should be able to go to their State agency and get response. In Pennsylvania it does not work with the data we have, and there is very little focus on it. There is also some question as to how impartial it is. I am not saying it is a dishonest mechanism. I am simply saying it is a mechanism that ought to be part of a focus. Plans ought not to be approved for the States that do not have effective State-based mechanisms. That would allow the Federal Government to force the State to do its own compliance.

Mr. ERDAHL. Miss Stotland brought up a response as to legal services. Funds for all programs are going to be under a very severe assault here in Congress.

One of you mentioned the need for nondiscriminatory IQ tests. We have had a lot of concern in this Congress about testing.

Would you elaborate as to how you see IQ tests at times could be discriminatory?

Ms. **Hepner**. I am not an educator, so I feel a little weak answering that.

We only know from experience that the norm groups that were used to establish the scaling in various psychological testing, the norm groups used to establish the groupings and determine who would fall where on an IQ scale, for example, do not reflect cultural and sociological biases of those being tested. As we become a more multicultural society, the less those tests reflect people's basic differences. The question is how to find the tests, and which tests will be used. That is largely the job I believe of professionals in the area. That is largely the job of the Office of Special Education, to make use of the great institutions in this country, of people who have an idea on how to solve this problem to get the information out to the individual States. It should not be left up to individual States or advocacy groups to hire an expert, bring them into the courtroom and say this is it.

Mr. **Barber**. Just an experience I had a couple of weeks ago in talking to a district coordinator in talking about the tests being used. She said they were using some adaptive behavior scales in addition to the IQ tests. They were finding these coming in too high, so they threw them out and gave another one.

Mr. **Erdahl**. In other words, they were doing better than they should have done in the previous test?

Mr. **Barber**. Yes. They were so focused on the IQ tests that if they got results contradicting, they tossed it out. There was no one there to catch the matter. But the narrow focus on the IQ tests you have to get away from. I do not care what pencil-and-paper test it is. That is the problem. It creates a number that becomes so central in people's mind—the child got a 69, he must be retarded. We have to get away from that focus.

Mr. **Simon**. We thank the panel.

The next panel will consist of Calvin Frazier, Joanne Goldsmith, and Leonard Hall.

First we will hear from Mr. Calvin Frazier, a member of the Council of Chief State School Officers.

It is good to have you as a witness again.

PREPARED STATEMENT OF DR. CALVIN M. FRAZIER, MEMBER, COUNCIL OF CHIEF STATE SCHOOL OFFICERS AND COMMISSIONER OF EDUCATION, STATE OF COLORADO, ON BEHALF OF THE COUNCIL OF CHIEF STATE SCHOOL OFFICERS AND THE NATIONAL ASSOCIATION OF STATE DIRECTORS OF SPECIAL EDUCATION

Mr. Chairman, Members of the Subcommittee: I am Calvin Frazier, Commissioner of Education for the State of Colorado and a member of the Council of Chief State School Officers (CCSSO). The Council is an independent organization of the commissioners and superintendents of education in the fifty states and six extra-state jurisdictions. Accompanying me in this joint testimony is Dr. Leonard Hall, Assistant Commissioner of the Missouri Department of Elementary and Secondary Education. Dr. Hall is past-President of the National Association of State Directors of Special Education (NASDSE). Each chief state school officer is responsible for the administration of education programs serving the needs of all children and youth in his or her state. Members of NASDSE are charged, within each state education agency, with specific responsibility for children who require special education and related services, those children whom P. L. 94-142 was designed to serve. The Council is pleased that NASDSE is joining with us in presenting these comments. Our joint testimony reflects the concerns of those state education officials who have both overall and specific responsibility for delivering educational services to handicapped children and youth. Our statement also reflects our belief that special education is an integral part of our commitment to appropriate education for all of our nation's children and youth.

The comments discussed in our testimony are drawn from discussions with our respective memberships during recent national meetings of the Council this week in West Virginia and three weeks ago of NASDSE in Newport, Rhode Island.

At the outset, we want to compliment the Secretary for her leadership in moving forward to address, among other issues, some of the areas raised in a policy statement submitted recently to the Secretary by the Council. This policy statement was developed by representatives from 15 state education agencies and reflected common concerns and problems experienced in our attempts to implement

P. L. 94-142 fully. This position statement was presented in the spirit of creating a balanced partnership and continuing dialogue between the federal government and the states in the interpretation and in the procedures for implementing the law. The recommendations presented focused on four broad administrative issues affecting state-level implementation of P. L. 94-142. Recommendations were made in the areas of:

1) the state plan process;

2) Office of Special Education and Office of Civil Rights relationship to state education agencies;

3) consistency of standards and criteria to meet P. L. 94-142 requirements, and;

4) supervision of interagency responsibilities.

We are pleased that the recently signed Memorandum of Understanding between the Office for Civil Rights (OCR) and the Office of Special Education (OSE) responds directly to certain of the recommendations of our policy statement. The 75 day plan approval process specified in the agreement may help in a timely and orderly review of plans and flow of funds. The cooperative working relationships between OSE and OCR reflected in the agreement should result in the establishment of consistent federal standards and improved relationships with the states. We commend the Secretary and the staff members of OSE and OCR who negotiated this cooperative position and we pledge our support to help achieve the spirit of this intended cooperation.

In closer review of the memorandum of agreement we have certain concerns. Following your request we will speak to these as they fall in the areas of:

1) federal policy development,

2) monitoring and enforcement, and,

3) technical assistance.

We will also reinforce some overall issues connected with implementation of P. L. 94-142 which are not covered in the memorandum of agreement.

Federal Policy Development

OSE has been in the process of developing policy statements in a number of areas for some time, and plans to develop additional policy statements in 1981. While input has been provided by consumers and constituents on some of these areas, that input has been achieved for the most part through informal channels. To date, there has been only one instance of a systematic, formal procedure to solicit input from either the nation's chief state school officers or the state directors of special education on the resolution of any of these issues. We strongly recommend that formal procedures be developed to provide for constituent input on the identification of policy issue areas, the scope and nature of the specific issues, and in the policy development and interpretation process. For example, OSE and OCR, in our opinion, put the cart before the horse when they address certain issues regarding related services, such as psychotherapy and catheterization, when the need is for criteria for determining "When is a service a related service?" As we have mentioned in previous testimony (Fall of 1979 and Spring 1980), OSE and OCR have been inconsistent in applying criteria for determining the answer to this question. Though Section 504 regulations do not address this question, OCR officials have rendered decisions which, in our view, have contradicted the parameters for related services set forth in P. L. 94-142 and its regulations. A consistent interpretation or definition of related services is needed. We believe that

P. L. 94-142 provides that definition. We recommend that the Memorandum of Understanding provide the mechanism for making OSE the lead agency in this area for assuring a common interpretation of this important provision.

Review and Approval of State Plans

The Council applauds the provision in the memorandum of agreement between OSE and OCR which provides a specific timetable and process for the approval of three-year state plans and annual plan amendments under the Education for All Handicapped Children Act. The Council encourages and endorses the develoment of an established and timely process for approval of state plans which include clear procedures, criteria for approval and definite timelines. Our members have discussed with the Office of Special Education alternatives for establishing this process. The response to this concern in the memorandum of agreement, however, raises some very basic concerns for our members.

First, the agreement deals only with the relationship of OSE and OCR in the state plan approval process. We believe that handicapped children will be best served by defining the state plan as a document which outlines processes and procedures which the state will use in delivering special education services. Instead, the memorandum of agreement between OSE and OCR reinforces the federal view of the state plan as a compliance document for both P.L. 94-142 and section 504 current year complaints. The problem with using the plan as a compliance document is that neither the state nor the federal agencies can focus properly on the document as a plan. That is, the plan cannot be used as a guide for continued successful implementation of the law and regulations, because future funding and implementation activities may be held up due to past disagreements. If the intent of Congress regarding the purpose of the state plan is not sufficiently clear in the existing law to allow the states and executive branch agencies to agree on that purpose, then we recommend that an additional statement from the Congress would be helpful. Such a statement might take the form of a report from this subcommittee, an amendment to the law, or whatever would be necessary to clarify this point.

In the Council's statement, "Implementing P.L. 94-142", we suggest that the timetable for OSE approval of state plans should incorporate provisions for a timetable of negotiations between a state education agency (SEA) and OSE. The Secretary's Task Force Report and memorandum of agreement only incorporate provisions for a specific timetable for negotiations between OSE and OCR. A timetable and specific set of processes for negotiations between the state and the federal government is not provided, and we question whether the twenty days following OSE receipt of OCR comments will allow adequate time to work out areas of disagreement between the position of the two federal agencies and the state agency concerned. The "bottom line" then, is that the timetable focuses on a specific schedule for OCR and OSE to work out their reactions to the state's submission, but does not provide a similar schedule for the state to negotiate with the federal agencies. Moreover, the timetable provided in the agreement does not appear to contemplate any process by which states might appeal a plan disapproval.

Additionally, the agreement does not now seem to allow for setting aside the OSE/OCR timeline if a request for clarification or additional information is returned to the state in question. We recommend, Mr. Chairman, that these agencies address the way in which their timetable for interaction could constructively include the state whose plan is under review.

Compliance, Monitoring and Enforcement Issues

The provisions for complaint investigations contained in the memorandum of agreement go far towards ensuring the coordination of activities between the two federal agencies. However, the Council remains very concerned about several issues in the area of complaint investigation and resolution. First, no provisions are made in the agreement for interaction between OSE/OCR and SEAs which may also be providing resolution to the same complaint. Second, the definition of "complaint" is not presented clearly. Finally, the procedures for planning technical assistance to states and local education agencies do not adequately take into account the results of complaint investigation efforts. We recommend that the two agencies take the further constructive step of basing the technical assistance they provide to states on the insights gained from analyzing patterns.

The memorandum of agreement does not address an important intergovernmental issue raised in the Council's statement on implementation of the law: the need to have a single process for the resolution of complaints operating at any one time. The Council recommends a single process which affords complaint resolution in a timely manner and which clearly delineates the roles, responsibilities, and procedures of both federal and state agencies as they monitor and enforce the requirements of P.L. 94-142 and section 504. The current memorandum may help reduce inconsistencies between the two federal agencies. Complaint investigation inefficiencies can be further reduced when states are more thorougly brought into the process. The Council believes that state procedural safeguards authorized by Congress and approved by the U. S. Department of Education should be exhausted before OCR commences a complaint investigation. OCR indicates that its jurisdiction does not rest on exhaustion of "state" remedies. However, when these remedies have been prescribed in federal law and approved by a federal agency, are they any longer merely "state" remedies? We believe coordination between states and OCR/OSE is both possible and desirable in helping to insure that complaints are investigated efficiently and resolved fairly.

Mr. Chairman, it strikes me that one source of the confusion with respect to complaints is that the Council, among other groups, has thought of OSE primarily as being responsible for programs, and of OCR as an agency whose primary function should be to enforce the civil rights provisions of P.L. 94-142 and section 504 as necessary. The memorandum of agreement, however, appears to assign enforcement responsibility for 94-142 to OSE, and for section 504 investigations to OCR. Such a division of labor would be fine, except that neither this agreement nor any other document with which we are familiar sets forth in any clear way the differences between P.L. 94-142 and section 504 civil rights requirements.

A larger issue than the memorandum of agreement addresses is that of the definition of "complaints" under law and regulation. There is general confusion, Mr. Chairman, over exactly what constitutes a complaint under P.L. 94-142, under section 504, and under the provisions of various regulations and court decisions. There is an opportunity here for the Congress to help clarify the issue by defining clearly what constitutes a complaint. Short of Congressional action, I believe that it would be most helpful for agencies such as OSE and OCR to define clearly what constitutes a complaint so that states, local education agencies, individuals, and the federal government will all be using the same vocabulary.

Finally, Mr. Chairman, the Council is concerned that the procedures for planning and mounting effective programs of technical assistance from the federal level should reflect what the agencies are experiencing in enforcement efforts and complaint investigations. The memorandum of agreement provides a detailed timetable for the development of a technical assistance plan coordinated between OSE and OCR. However, the sources of input described for that plan do not include the results of enforcement efforts. It would seem to me, Mr. Chairman, that we could reduce the necessity for a great deal of adversarial enforcement proceeding if technical assistance from the federal government to states and localities was based more fully on enforcement results. Indeed, in time it should be possible to change the accepted procedure from "monitor and enforce" to "monitor and assist". The greatest progress in providing the education our handicapped young people need can be made by cooperative activity between the levels of government concerned, not by a continued reliance on adversarial proceedings which often do not recognize the realities of the situation which exists within a particular state or locality.

Where Do We Go From Here?

The special education advocacy groups have flailed the Department for inconsistencies in enforcement. Chief State School Officers, on behalf of states and local school districts have asked for procedural and enforcement clarifications. The Department of Education has responded with the Task Force Report and the Office of Civil Rights/Office of Special Education Memorandum of Understanding. A base has been laid for future resolution steps and one must recognize this development over the past months as having some positive aspects.

On November 4, voters contributed a statement that was considered in formulating the following recommendations relative to pursuit of solutions to P. L. 94-142 and Section 504 issues.

RECOMMENDATION NO. 1

Congress should examine the Task Force Report and particularly the OCR/OSE Memorandum to determine if ambiguous legislation triggered the need for such a memorandum.

RECOMMENDATION NO. 2

Congress and the Executive Branch should examine the Adams Court Order to determine why it was necessary for the Court to provide definitions and timelines to an executive department.

RECOMMENDATION NO. 3

Assuming that the current leadership in the Department will be leaving when the new administration begins in January, these key individuals should be invited to assist in a review of the issues that have retarded implementaton of P. L. 94-142 and Section 504. The analysis should suggest those matters that need to be resolved through procedural changes, modification of regulations, or amendment to the law. The input from this experience base should be sought and considered by the Ninety-Seventh Congress and the Reagan Administration.

RECOMMENDATION NO. 4

Any revision of the memorandum and organizational structuring of the

Department should seek to maintain the appropriate identity and separation between OSE and OCR. OSE and the Department itself need a maximum number of contacts with states and local school districts in an assisting, supportive context. If relationships between the three governmental levels are to be improved, such bridges need to be built. This agreement took us in the opposite direction and if implemented, would arouse greater hostility and resentment toward the Department and the Federal Government because OCR's attitude has historically been adversarial and enforcement-oriented.

RECOMMENDATION NO. 5

A sharper division needs to be made by the Department or Congress on those matters that fall under Section 504 and those coming under P. L. 94-142. This division is important, not only in the enforcement processes to be followed under each provision, but also in the division of responsibilities, organizationally at the federal, state and local levels.

RECOMMENDATION NO. 6

No Departmental memorandum or regulation should define "related services" in the absence of Congressional intent. Therefore, a high priority of the new Congress should be clarification of related services and some general direction to the Department as to the special education dollars intended to flow to educational development and those fiscal responsibilities that must be met by other agencies and revenue sources. Much litigation and many current complaints are based on an uncertain base of opinion and interpretation growing out of this vaguely defined phrase.

RECOMMENDATION NO. 7

A high priority of the new Department leadership should be assistance to the states in establishing meaningful interagency agreements between state governmental entities. States need assistance in implementing Congressional intent in light of a variety of governance structures at the state level. Personnel should be assigned to this task by the Departments of Education and Health and Human Services.

RECOMMENDATION NO. 8

The Inter-governmental Advisory Council, created by Congress in the Organization Act and chaired by Governor Robert Graham of Florida, should be advised of the critical need to resolve inter-governmental issue related to serving handicapped citizens. Charged by legislation to advise the Secretary, Congress and the President on inter-governmental matters, the Council should be a sounding board for ideas and a valuable source of recommendations.

RECOMMENDATION NO. 9

The Congress and the new administration should give serious consideration to developing uniform state plan submission and review procedures, appeal processes, auditing requirements and enforcement patterns for all federal educational programs. The focus on these components for Section 504 and P. L. 94-142 is commendable. However, to promote the maximum efficiency, understanding and acceptance in the states the solution to Section 504 and P. L. 94-142 issues should be seen in the broader arena of requirements found in many other federal programs.

In the years ahead, those working on conflicts involving local school districts, states, and federal agencies should make every effort to build on commonalities. We need open forums where advocacy groups meet with implementers to listen, review, debate and reach agreement if at all possible. The states and local districts do not feel we have been adequately involved with the Department in defining the problems and seeking solutions. Involvement is needed as a base for building a better rapport between governmental levels.

We thank this Committee for the opportunity to make this presentation. We hope the recommendations are helpful to the various parties that must deal with these issues in the coming months.

We as chief state school officers, directors of special education and those that we work with in state agencies and school districts pledge our support to Congress and the new administration in improving the processes related to serving handicapped youth.

STATEMENTS OF CALVIN FRAZIER, COUNCIL OF CHIEF STATE SCHOOL OFFICERS; LEONARD HALL, NATIONAL ASSOCIATION OF STATE DIRECTORS OF SPECIAL EDUCATION; AND JOANNE GOLDSMITH, NATIONAL ASSOCIATION OF STATE BOARDS OF EDUCATION

STATEMENT OF CALVIN FRAZIER, COUNCIL OF CHIEF STATE SCHOOL OFFICERS

Mr. FRAZIER. Let me say, I am pleased to be at the table with Joanne Goldsmith and Leonard Hall. Mr. Hall is from Maryland and a real resource administrator.

I would like to go through and focus on recommendations. I would also like to thank publicly the support that John Martin of our State school officers' staff has put together in helping out.

Mr. SIMON. Incidentally, we will enter your statements in the record. If you wish to read them, fine; if you wish to summarize, fine.

Mr. FRAZIER. We do commend the Secretary for laying a base that can be picked up in the days ahead.

As to the task force report, there is some criteria that have not been addressed, but there are some pluses in the material. We commend that. I think it is a base on which we should build, and therefore, that is the thought of our recommendations.

We have divided the presentation into two parts, Mr. Chairman, one dealing with the document itself, and a second part that I personally spent a lot of time on, trying to suggest where do we go from here in terms of looking at congressional opportunities, department change, and so forth. So, that is the division of our paper.

First, in terms of the paper itself, I would like to underscore a remark made by the previous panel. There is a real need for the Office of Special Education and the Department to develop a more systematic procedure as to policy. We have been concerned and only once could we feel we participated in a systematic development of policy with the Department of Education. I think that is missing a real opportunity. Apart from missing that opportunity for building something of quality, it misses the opportunity to bring people together. That is a theme I will come back to several times.

We feel as the paper has gotten into discussing related services, that for the most part it misses the point. We need to go back and define related services, and hopefully the program people in the OSE and the Department are the ones who define the services, not necessarily the enforcement officers. So we would hope that OSE would be the prime mover there.

The key point to us would be the discussion in the paper and the implication suggested for the plan that we submit as a State. I think it is fair to say we have participated in this process with the idea that this is a planning document, it is a statement of intent, and have not seen it as a compliance document. We feel that the Congress itself may not have intended this document to be a compliance document. That is a very key determination. If Congress so intended, I think we would feel as States that we would like to have Congress say that. If it is not an enforcement document, it would be helpful to the Congress to point up what I think could be a much more positive use of this plan inasmuch as enforcement can always go back to rules, regulations, and the law. The plan itself might be a totally different part of the building of special programs in the State. We view it one way; obviously OSE and others view it another way.

Another opportunity that is missed is an opportunity to spell out how the plans affect the States. In many cases there is interaction between the OCR and OSE, but many times it does not result in the State being reviewed. We are going through a State review process and are up to 143 days in our State plan review. During that 143 days, we have had only two real communications up until the other day with the Office of Special Education.

I think the heart of the problem may be in the vertical relationship rather than a horizontal relationship between the two agencies. That was not addressed. I think it would have been strengthened had it been dealt with.

Another key issue we would like to raise is a need for a single process for resolution of complaints. It bothered me a great deal as commissioner of education to sit and read about the interaction between the OCR and OSE in handling complaints. There ought to be a sharper division made so you know you are dealing with one agency and there is no duplication and overlap. This is a point we have made before, and I want to come back and underscore the discouragement we feel when we talk to OCR and OSE, when we are following one set of appeal procedural safeguards, that being the local impartial hearing, the State review, and at the same time having the OCR go through the same process, then tell us because the OCR people cannot wait until administrative remedies have been exhausted. I am raising the question of whether these are

State remedies and administrative remedies. We are following procedures approved by Congress. Is it any longer a State remedy? I feel it is a Federal remedy, and therefore ought to be recognized by another Federal agency.

Mr. **Simon**. I hate to interrupt you. We have a rollcall, and will have to take a 10-minute recess here, with apologies.

[Recess.]

Mr. **Simon**. The subcommittee will resume its hearing.

Mr. **Frazier**. I had just finished raising the question of whether a State in following federally prescribed remedies is really following State remedies. I would like to go on then and indicate that one of the feelings that you get as you read the document is that there needs probably to be a division and an explanation of the differences between section 504 and Public Law 94-142. I believe section 504 is an umbrella and enforcing that brings it into all kinds of other decisions as to the intent of Public Law 94-142. That division needs to be sharpened.

There is some question in my mind as to the definition of complaint. I want to come back to that in one of the recommendations, but since that is so key in the whole document, the word "complaint" needs to be highlighted.

Finally I would just say, reading the document, one gets the impression the only responsibility of the Federal Government is one of monitoring and enforcement. I hope in the months ahead we can see the responsibility as one of monitoring and assisting. That is a whole different philosophy, and one that did not come through in this particular document.

If I could focus on the recommendations at the end of the paper. We have heard advocacy groups, the chiefs of education have come in, the Department has responded. Now something else has happened, and that is the vote on November 4. Now we have something else to consider.

No. 1, it is my recommendation that Congress should examine the task force report and particularly the OCR/OSE memorandum to determine if ambiguous legislation triggered the need for such a memorandum. There are some questions that can be asked; in terms of good government, some of these things should not have been decided by Congress.

No. 2, Congress and the executive branch should examine the Adams court order to determine why it was necessary for the court to provide definitions and timelines to an executive department. The Adams court order involves the *Adams* v. *Califano* case involving the enforcement of a desegregation plan. It is mentioned in the document and in our contact with OCR. Many times we get back the comment we are prohibited from streamlining because of the Adams court order. I feel that has to be looked at by both branches. If the judicial branch has gotten into controlling, this should not be a means by which OCR has hidden behind what I think could be constructive, creative changes.

Recommendation No. 3. As we move to a new administration, we have had fine people in OCR and the OSE. I am assuming that the positions will change with the turnover. Before they leave office, it would be good if they could summarize both to Congress and to the States those kinds of things that would markedly move special education and Public Law 94-142 ahead. I think that would be the kind of statement that would be beneficial to all of us, and that resource should not be lost.

Recommendation No. 4. Any consideration of the memorandum brings you to a concern that the organizational structure of Public Law 94-142 and section 504 and those two offices tend to be important. I would hope as anybody comes in in January they realize the OSE has its own identity, and should not be blended in with OCR where enforcement is the thing and not assistance.

From my standpoint as an implementer, after that group has gone to the States, reviewed documents, et cetera, the exit interview, where we spend 3 hours going over the results of their findings, I find to be beneficial. I think that is true of school oficials all over the country. It should not be concluded by the OCR sitting in making comments to come down on the State. There is a role for assistance, and it is not spelled out in this document.

Recommendation No. 5. Perhaps a sharper division must be made by Congress as to the intent and scope of section 504 and those things which are strictly Public Law 94-142.

Recommendation No. 6. I would hope that no departmental memorandum is used to define related services. As essential as that is and maybe as detailed as it might be, there is an intent which in the end has to be brought back to Congress. I will not dwell on that, because as I looked at the oversight commentaries, almost all speak to the problems of related services. I think Congress has serious interest in defining that phrase.

Recommendation No. 7. One of our major efforts has been in the individual States to develop meaningful interagency agreements to resolve those kinds of things between departments, institutions, but we need help. We need to have, I think, a common unit, perhaps, appointed by the Department of Education, and also Health and Human Services, that could give that a real focus in the next year and help us with those interagency agreements. So I am asking that somehow two Federal departments come together and work cooperatively to help the States.

Recommendation No. 8. The Intergovernmental Advisory Council was developed. This council is chaired by Governor Graham of Florida. They are to look at disagreements, concerns, issues that need resolution. I met with that committee a week ago and urged them to give this one of their high priorities as a culmination of their efforts. I would see that council as a sounding board, and would hope they could be used as a source for recommendations.

No. 9, we have talked here today and in the memorandum as to timetables, procedures, et cetera, relative to Public Law 94-142. I hope we step back and realize that this is only one State plan procedure for many Federal programs. It would be helpful to me to know that any State plan has a review process involving 75 days rather than knowing one is 75 days, one 120, one 45. If somehow in the Department activities they could come up with a coordinated and unified system of State appeals, auditing review procedures, this would be helpful to the States.

Finally, in closing let me say that in the years ahead, we have been working on these conflicts involving school districts, States, and Federal efforts. I hope whoever is leading the Department, that this staff and others in Congress will make an effort to build on commonalities. There is a lot of compassion for the handicapped. We need not argue over these things. We need some national forums. The Council of Exceptional Children was a part of a policy discussion group which brought many of us together. It was one of the few forums that I know of to bring together diverse thinking in terms of policy discussions. The Department should be leading the way on that kind of focus. We have not been involved, and I heard the advocacy group say this morning they have not been involved, and this is a loss.

Mr. Chairman, I would like to commend this committee and your leadership and say that the oversight hearings have been very beneficial. You came to Colorado; you and Congressman Kramer conducted those hearings. We went over the testimony and we began to see some ways of working together as a result of your coming there and holding those hearings. The oversight hearings have been very beneficial, and you are to be commended.

I hope none of my comments would create any doubt in anyone's mind that we have a commitment to serve the handicapped youth of our country and to do it well.

Thank you.

Mr. SIMON. Thank you.

Next is Joanne Goldsmith, of the Maryland State Board of Education.

STATEMENT OF JOANNE GOLDSMITH, NATIONAL ASSOCIATION OF STATE BOARDS OF EDUCATION

Ms. GOLDSMITH. I am a member—not president yet. I am delighted to be here on behalf of the National Association of State Boards of Education.

We appreciate the invitation to provide testimony today on behalf of our State and territorial constituencies. The State boards of education in the 47 member States and 5 territories are charged with the responsibility of formulating education policy for their respective jurisdictions and ascertaining that these policies are properly administered and implemented on behalf of the students in our Nation. State boards work very closely with their Governors, legislators, superintendents, commissioners, personnel within State and local agencies, advocacy groups, and parents.

We are encouraged by the initial effort of the Office of Special Education (OSE) and the Office for Civil Rights (OCR) in their October Memorandum of Understanding. It is clear that a difficult and complex set of issues has been addressed regarding proper coordination and the delivery of services. It is equally clear that the two offices have begun a formal structure for communication which, in the long run, may assist in the improved functioning of those agencies and the Department generally. We applaud these efforts; however, we view them as a first step, a basis for future change. We believe that changes at the Federal level must be viewed as a single step in a continuum rather than as final action which remedies all administrative actions at the State level.

We would like to specifically address the three major components of the task force report: (1) Federal policy development, (2) monitoring and enforcement, and (3) technical assistance, as well as the capacity of OSE/OCR to implement the overall plan. As we review issues raised in the policy area, I would like to share the following observations and recommendations.

Under the Memorandum of Understanding, the Office of Special Education and the Office for Civil Rights have agreed on a process for consulting and developing policy on Public Law 94-142 and section 504. However, these agencies failed to involve State officials in the formulation or design of the proposal. It is equally unclear from the memorandum that there is a willingness on the part of these agencies to move forward to address more directly the concerns expressed by States. Without this level of participation by State and local organizations, the development of successful policies and programs that impact States is quite clearly compromised and the problem areas become even further confounded. Clearly, the Federal Government has an important role to play in setting broad policy in interpreting the law, but it must respect the unique character of the various jurisdictions and permit the States the responsibility of developing the more specific policy approaches required to meet those broad goals.

The task force report details an extensive and intricate fabric for coordination between the Office of Special Education and the Office for Civil Rights and, where it appears appropriate, the Office of General Counsel and the Office of Planning and Budget. While it is clear that some effort is being made to improve overall communications within the Education Department, it is not clear at this point what involvement the Department intends for State policymakers. I will elaborate on this issue later, but believe the task force report should have included specific remedies reflecting the involvement of State, local, and overall public participation.

In the area of monitoring and enforcement, again it appears that interdepartmental communications may improve, but State and local concerns go largely unabated and unaddressed. We urge you to seek early input from States regarding existing data collection procedures at the State level so that the data collection plan will build from what currently exists at State and local levels. Joint planning by Federal and State officials for data collection is critical in this process. We encourage the task force to consider assisting States as they develop their own data systems.

While the report attempts to clearly delineate the roles and responsibilities of OSE and OCR in monitoring and enforcement, both offices, however, must consult the other, and it appears that both agencies retain responsibility for plan approvals and enforcement, while neither can exercise singular authority. A longstanding complaint asserted by the SEAs has centered on the issue of duplication of effort. It is not unusual to find simultaneous investigations being conducted by both the OSE and OCR. In all too many cases approval of plans or dismissals of complaints by one office has either reversed or affected a decision by the other. The task force report is vague and noninstructive on this important area of concern to State and local agencies. We urge you to look at this very carefully.

The States have contended that several difficulties in the enforcement area might be remedied if there were a realignment of the OSE and OCR enforcement functions. It has been recommended that OSE be responsible for the development of policies and procedures for Public Law 94-142, and that OCR be limited to the investigation of individual complaints. Clear divisions of responsibility between the two agencies would provide guidance to SEAs and LEAs and would improve the expeditious resolution of specific program issues and complaints. Regrettably, the final report stops at this point. It appears to us that rather than only expending energy for improving coordination, each office should expend energy in determining which office will have what authority.

The report calls for ongoing assessment, a process for targeting resources, and the identification of needs, priorities, and strategies to be utilized in providing technical assistance. These appear to be appropriate elements upon which to focus. We would encourage OSE and OCR to consider overall planning of technical assistance efforts to insure that they focus on problems that State and local agencies are experiencing. We hope there will be continuing consultation with State and local officials to determine these areas of need.

We would also bring to your attention the need to provide technical assistance before the submission of State plans. Logically, this would provide the SEAs an opportunity to receive instruction and support; to organize their plans in a manner which more closely meets the Federal expectation; to avoid delays in approval and implementation; and reduce costs. Clearly this recommendation falls under the rubric of being in the public interest.

The State boards of education strongly support initiatives such as these to improve services to handicapped children and youth. A mutual partnership between local, State, and Federal agencies will insure the probability of successful implementation of these efforts. If these and other issues are resolved, with adequate financial requisites committed, we may well be on the road to offering every handicapped child in America "a free and appropriate education."

Thank you for this opportunity to share our views and concerns. As always, we are prepared to assist you in meeting our common goals.

Mr. SIMON. Finally, Mr. Leonard Hall. He used to be a Republican National chairman.

STATEMENT OF LEONARD HALL, NATIONAL ASSOCIATION OF STATE DIRECTORS OF SPECIAL EDUCATION

Mr. HALL. I think he came from a better bloodline, Mr. Chairman.

I have just a few comments, if I may, to echo the joint testimony Mr. Frazier presented.

This concludes your effort as to these hearings. I think it would be a grave oversight if the record did not show that the U.S. Congress should be recognized as the super advocate of Public Law 94-142. Those of us who are implementers of the law would be accepted as implementers and be able to work with you to carry out the intent of the statute. I think this is a critical issue, and a triad of advocacy should be established.

I think one needs to take a look at the litigation being imposed on those of us trying to implement the law. I suggested last year that the 1970's was the decade of legislation, and one should not expect the 1980's to be other than a decade of litigation.

Unnecessary OCR complaints which must be investigated not only diffuse our efforts to be service providers, but also diffuse the dollars as we look to the need for more funds to implement the law, and clearly the data will bear out it is an expensive upfront proposition to serve these children's needs, yet the long-term payback is great. It can also be said that we are diffusing remarkable sums of dollars dealing with unnecessary obstacles that could go into the appropriated budget to help more youngsters as we are talking of ways to more efficiently spend the resources we have.

I think there is an erroneous assumption that OSE and OCR provide technical assistance to the States. This has not been the case. I am here to observe that just as the State agency has been remarkably busy in trying to implement the statute, the Federal Government agencies have had the same role, and those of us on the firing line have not received the technical assistance to tell us what the skeleton is. Instead, we perceive the flexing of the muscle. I think a physiologist would tell you the muscle has to be attached to the skeleton before it is functional.

I find it interesting that in the agreement, the Department of Education is going to use the regional resource centers established by resource funds and also the technical assistance OCR uses to determine the needs of those of us at the State level. I would like to express our needs directly by letter or phone call.

A symptom of one of the problems is getting back the triad of advocacy. Come to us who work with the people and the kids. Listen to our problems and solutions, and if you can, help us; if you cannot, we will understand, but listen and hear. I think that is an important issue.

Finally, I would implore the Department of Education, as I infer the agreement, as the Department of Education takes on a new posture in the next 4 years, to recognize its constituency. The constituency is the children and those of us who serve the youngsters. But I think it is as important to listen to those of us who serve as to listen to those who observe what we do. I think those of us who serve feel perhaps we have not been listened to, and I think we have a good story to tell, one we are proud of and one we are grateful to you, the Congress, for giving us the experience.

Mr. SIMON. Thank you, all three of you.

All three of you touched on the matter of involvement in policymaking and the lack thereof. What is your perception of how policy is made right now in the executive branch?

Mr. HALL. I would be pleased to try to speak to it. I perceive policy when it does come to be reactionary. I do not feel policy is based on proactive responsiveness, but I think it is a defensive reaction to an issue which may be perceived to need a shotgun to kill an ant.

The whole fundamental philosophy of Public Law 94-142 almost mandates that we be cautious as we develop policy, because you cannot shotgun individual issues. It pleases me that some of the proposed policy statements have not yet come out, and I would hope they never do, at least not until you go to the people who would have to live with them, analyze them and determine how many potential services you may come up forfeiting.

Mr. SIMON. Any comments from either of the two of you?

Mr. FRAZIER. I think the general perception is that the advocacy groups raise questions and cause concerns, that the OSE reacts, develops guidelines or takes a position, and is reluctant to go to the implementers lest they be seen as being coopted by the implementers. So I feel there is not a creative mode by which policy is developed.

Ms. GOLDSMITH. I would have to add that one of the things that happens to us is that we are trying to legislate too formal a structure for cases. We have lost any degree of trust between the advocacy and those trying to deliver services. So any abused case in any particular State because of error boils itself up to a court issue which impacts negatively on great numbers of young people.

It seems many of us are talking about the classroom and a youngster, and we have lost the trust of the professionals who perform the services; and particularly those of us who serve the public find ourselves caught between the devil and the deep blue sea when we try to help a younster and deviate in one small way in the educating of that child. There is no one way to educate all children. It is a real problem to all of us who are trying so hard to educate our handicapped.

Mr. SIMON. Dr. Frazier, you referred a couple of times to the problem that is created by the definition of "complaint" or the lack of definition. Do you want to elaborate on that?

Mr. FRAZIER. Yes, there were two parts here. One, there was reference in the memorandum that it was built on the definition of "complaint" as contained in the adoption court order. Inasmuch as there was no explanation of what that was. I did not find reference to the complaint in the Federal Register. I am still bewildered by what was meant by that, and its importance.

Second, from the implementer's standpoint, we see complaints in light of basically three aspects: the appeal process, set in motion by impartial hearing officers, and State reviews, when you have questions of assessment, placement, and program adequacy. Those are areas where there is a procedure set up to deal with those. Then there is another level of complaint based on the adequacy of a State plan. I think those might be dealt with in another way, and I think that is why I say the key to a memorandum outlining differences and responsibilities between two agencies has to go back and be sure you define that animal of the complaint to decide what each will do.

Mr. SIMON. You made a suggestion which I will pass along to the staff, and that is that since there will be changes in the administration we should write to those leaving and get their reflections.

Finally, I was interested in your approval of the exit interview. We heard testimony yesterday that the Department now plans to drop the exit interview and instead of the exit interview, write to you about 3 or 4 weeks later, giving a summary of their findings. You—I gather you would much prefer the exit interview, where you could have more of a dialog than you could have from a letter.

Mr. FRAZIER. I personally support that, and feel it sets a good pattern with the State where we conduct our local onsite review where most educators feel it is vital to leave that discussion with the observations. I am disappointed to hear that the Federal would drop that aspect.

Mr. **Simon**. What percentage of your time goes into Public Law 94-142 and section 504? Just a guess.

Mr. **Frazier**. I charted that last year, and it was close to 15 percent.

Mr. **Simon**. Mr. Erdahl.

Mr. **Erdahl**. As always, you have the capacity for distilling the essence from the testimony. In other words, you have asked my questions.

People out in the real world in the States are somewhat suspect of what the Federal Government does. We are aware of that. The chairman and I both come from backgrounds as former constitutional officers within our States. I think within the Congress, you will find receptivity to the problems the States face.

The question is, how might the States be more involved in the policymaking?

Mr. **Hall**. If one takes a close look at Public Law 94-142, you find it is a grant-in-aid program to enable a State to serve all the children, all the people. Therefore, it seems to me that the role of the Federal Government is nothing more than to administer the program given to it by the Congress on behalf of the States to provide the supportive services, the technical assistance, the participatory partnership to help a State meet its needs. You cannot shape the policy until you ask the State about its need.

I think there needs to be a meaningful process where the chief school officers and other beneficiaries, the coalitions, the CEC, the funded groups play a part. But now it is not the organized, meaningful system. It is whoever has the ear. We are too busy with our programs to squeak too much. It is our fault for not being "lobbyists," but we have much to do before we sleep, and we have been busy at it.

Mr. **Erdahl**. Dr. Frazier, it seems to me one of the main concerns you shared with us is that the report would be viewed more as a compliance rather than as a supplanting document. Do you feel this document negates enforcement policies of some States?

Mr. **Frazier**. It does not set forth the establishment of a local State hearing officer and a review process. I do not see that this document acknowledges that critical and most direct involvement a parent has in appealing a process. I do not see why the OCR cannot restrain itself from involvement while this other procedure is going on.

Mr. **Erdahl**. Thank you very much. And thank you for being with us today.

Mr. **Simon**. We thank the panel for being here with us today.

Our next panel is Jean Tufts, president, National School Boards Association, Lisa Walker, director of programs in special education and rehabilitation services, Institute for Educational Leadership, and Fredrick Weintraub, assistant director for governmental relations, Council for Exceptional Children.

Jean Tufts is the president of the National School Boards Association. We are very pleased to have you as well as the staff members of your association with us.

We have a rollcall. We will take a fast 10-minute recess.

[Brief recess.]

Mr. **Erdahl**. We will call the meeting back to order again, please.

Mr. Simon will be detained on the House floor concerning the budget matter and he has asked me to chair the hearing. We will proceed with Miss Tufts' testimony.

STATEMENTS OF JEAN TUFTS, PRESIDENT, NATIONAL SCHOOL BOARDS ASSOCIATION; LISA WALKER, DIRECTOR OF PROGRAMS IN SPECIAL EDUCATION AND REHABILITATION SERVICES, INSTITUTE FOR EDUCATIONAL LEADERSHIP; AND FREDRICK WEINTRAUB, ASSISTANT DIRECTOR FOR GOVERNMENTAL RELATIONS, COUNCIL FOR EXCEPTIONAL CHILDREN

STATEMENT OF JEAN TUFTS, PRESIDENT, NATIONAL SCHOOL BOARDS ASSOCIATION

Ms. **Tufts**. Thank you, very much.

My name is Jean Tufts, and I am president of the National School Boards Association. For the record, I would indicate that the National School Boards Association is the only major education organization representing schoolboard members. Throughout the Nation, approximately 90,000 of these individuals are association members. These people, in turn, are responsible for the education of more than 95 percent of the Nation's public schoolchildren. Currently making its 40th year of service, NSBA is a federation of State school boards associations, with direct local school board affiliates, constituted to strengthen local lay control of education and to work for the improvement of education. Since most school boards members are elected public officials, they are politically accountable to their constituents for both education policy and fiscal management. As lay unsalaried individuals, school boards members are in a position to judge legislative programs purely from the standpoint of public education, without consideration for their personal or professional interest.

The National School Boards Association is pleased to testify on the "Final Report to the Secretary on Equal Education Opportunities for Handicapped Children." At the outset, we wish to congratulate the Office for Civil Rights and the Office for Special Education in their efforts to coordinate and improve their dual responsibilities to insure compliance with Public Law 94-142 and section 504 of the Rehabilitation Act. Since the Final Report is an internal management document, we believe we should limit our comments to its potential impact on school boards and the local delivery of Federal programs. In this regard, we are hopeful that some of our questions can be answered by simple explanation.

POLICY DEVELOPMENT: INVOLVEMENT OF LOCAL SCHOOL BOARDS AND DISCRIMINATION

The Memorandum of Understanding indicates that OCR and OSE will "continue to play the lead role in the development of policy relating to the education of handicapped children." It then goes on to list several policy questions.

On page 19, the memorandum lists several major policy questions requiring "immediate action to provide formal guidance." These policy items include psychotherapy, insurance, IEPs, and student discipline. Given local variances in potential costs, program operations, and need for intergovernmental cooperation, NSBA believes that major policy areas such as these should not be addressed without prior consultation with local school systems as well as State organizations. To that end, the document's proposal to publish "on an experimental basis" notices of intent represents an important first step toward involvement and dissemination. However, in dealing with proposed regulations, we find that Department policy is fairly well established and frozen at the publication stage. Presumably, this will be the case in dealing with these proposed policy issues. That is, if school district involvement is limited to comments on "notices of intent," the results will be less than adequate. We believe the memorandum should include, or at least require, that the two offices establish provisions for the routine consultation of local school systems and their representative organizations prior to formal publication of intent. I also would like to comment that the National School Boards participated in that forum on policy development where we brought in administrators and local administrators and discussed these issues, that was an excellent forum.

If approved by the Secretary, this document will effectively represent a major expression of the Department's policies and programs with regard to compliance. In order to further local school district understanding of the Department's total posture on special education, we would applaud any effort by the Department to articulate its overall special education policy, and priorities, under the two laws—of which, presumably, compliance would be only one component.

Coordination of offices: State plan approval/regional offices, and bureaucracy. NSBA is fully supportive of the requirement contained in appendix A at page 8 which would require final approval of State plans within 45 days. Further, we believe that OCR's role to indicate inconsistencies between State plans and section 504 is appropriate. However, we believe that the memorandum should specifically limit OCR's State plan role to section 504 compliance. Further, the memorandum should indicate that disagreements between OCR and OSE on State plan approval should be resolved within a time certain so people would know what those resolutions are.

In terms of the development, approval, and implementation of State plans, we are concerned that any efforts to strengthen the role of regional offices may result in inconsistencies with OCR and OSE in Washington, D.C., thereby creating unnecessary complications and bureaucratic layers between the local school systems and the final decisionmakers. While we do not oppose strong regional offices, we would appreciate some explanation to allay our concern.

Data collection: Need for Elaboration, school board consultation, publication in Federal Register. Appendix E of the report sets forth 14 compliance areas which are further presented under 69 subpriority issues. Although Appendix E summarizes the kinds of data that are available and the kinds of data which are needed for each of these areas, it is unclear as to what precise data may still need to be collected to meet the 69 compliance issues identified by OCR. We would recommend that a clearer statement be made as to whether expanded data collections would be sought, the specifics of those data collections, and their proposed timetables. Until the foregoing information is known, it would be impossible to comment on the 69 data issues and their respective priorities.

In addition, as in the case of policy development, we believe the report should indicate procedures for involving local school districts and their representative organizations in the development of data collection instruments. History has shown that the failure to do so only invites unnecessary costs and lost time to the local level. Further, once the instruments are developed, they should be published in their proposed entirety in the Federal Register for comment.

Technical Assistance. Appendix F of the report addresses the vital area of technical assistance. NSBA believes that parents, State, and local officials, and school people in general need to be brought together in their understanding of the programs, procedures, language, and policies of the Department of Education in administering the handicapped laws. Accordingly, we are favorably impressed by the dozens of diverse technical assistance efforts expressed by the report. Surprisingly, however, while the report specifically mentions administrators, and even mayors and county governments, its outreach strategies do not, at least specifically, mention local school boards. While we are aware of most outreach efforts to local school boards, we believe that, as the local governing bodies responsible for budget and policy, as well as accountability to taxpayers and parents, a more concerted effort of outreach to local school boards, in particular, should be indicated.

Enforcement: Individual investigations on potential bypass to establish Public Law 94-142 due process procedures? Within the area of enforcement, NSBA has a key question with respect to the investigatory process—which presumably OCR can answer with further clarification. Specifically, the report, as well as OCR officials, indicate that a greater emphasis will be placed upon the investigation of individual complaints. To the extent OCR's investigations of complaints deal with such procedural safeguards as to whether a school district developed or IEP or accorded due process, an appropriate role is defined. However, to the extent OCR investigations became an alternative to local IEP procedures, especially with OCR officials advancing the standards or elements of specific programs, we believe serious questions would arise. Indeed, under such circumstances OCR would be bypassing the very Public Law 94-142 procedures which it is charged with enforcing, as well as moving into substantive educational programing not unlike the approach which raised such extensive objections to the proposed Lau regulations. We believe they should look at the procedural matters, not the substantive matters.

The report and school funding. While the report is a management document, it does suggest new costs for local school districts—regardless of whether those costs relate to yet undefined changes in policy development, data collection, or compliance investigations. The report should indicate that the two offices will issue estimates of local cost increases for such changes. More importantly, earlier in our testimony, we recommended that the Department develop an overall policy on special education, which should place the local costs arising from this report in context with the Federal Government's overall policy on funding special education—which it has frozen at 12 percent of excess costs.

Depending on the magnitude of such costs and the willingness of Congress to provide adequate funding, formal indication of priorities among the activities listed in the report may need to be indicated. Certainly, we would hope that the Congress would not encourage the Department to pursue new cost items unless it was willing to increase Public Law 94-142 funding.

In conclusion, NSBA supports efforts by the various offices within the Department of Education to increase the effectiveness and efficiency of Public Law 94-142 and the section 504 compliance activities. We remain generally positive toward the report, but believe that the concerns which we have raised should be explained. Further, since the report is intended to be a management tool, we assume it will not be utilized as a primary authority to justify new activities or major policy changes in existing activities. Obviously the offices which created the report ascribe certain meanings to the language; and ultimately, the merit of the report will be in its execution. Assuming NSBA's concerns are resolved, we believe that the report does represent a major step toward improving the administration of the laws.

[The prepared testimony of Jean Tufts follows:]

PREPARED TESTIMONY PRESENTED BY JEAN TUFTS, PRESIDENT, NATIONAL SCHOOL BOARDS ASSOCIATION, ACCOMPANIED BY THOMAS A. SHANNON, EXECUTIVE DIRECTOR; AUGUST W. STEINHILBER, ASSOCIATE EXECUTIVE DIRECTOR; AND MICHAEL A. RESNICK, ASSISTANT EXECUTIVE DIRECTOR

My name is Jean Tufts, and I am President of the National School Boards Association. For the record, I would indicate that the National School Boards Association is the only major education organization representing school board members. Throughout the nation, approximately 90,000 of these individuals are Association members. These people, in turn, are responsible for the education of more than ninety-five percent of the nation's public school children. Currently marking its fortieth year of service, NSBA is a federation of state school boards associations, with direct local school board affiliates, constituted to strengthen local lay control of education and to work for the improvement of education. Since most school boards members are elected public officials, they are politically accountable to their constituents for both education policy and fiscal management. As lay unsalaried individuals, school boards members are in a position to judge legislative programs purely from the standpoint of public education, without consideration for their personal or professional interest.

• Introduction

The National School Boards Association is pleased to testify on the Final Report to the Secretary on Equal Educational Opportunities for Handicapped Children. At the outset, we wish to congratulate the Office for Civil Rights and the Office for Special Education in their efforts to coordinate and improve their dual responsibilities to ensure compliance with P.L. 94-142 and §504 of the Rehabilitation Act. Since the Final Report is an internal management document, we believe we should limit our comments to its potential impact on school boards and the local delivery of federal programs. In this regard, we are hopeful that some of our questions can be answered by simple explanation.

- Policy Development: Involvement of Local School Boards and Discrimination

The memorandum of understanding indicates that OCR and OSE will "continue to play the lead role in the development of policy relating to the education of handicapped children ..." On page 19, the memorandum lists several major policy questions requiring "immediate action to provide formal guidance." These policy items include psychotherapy, insurance, IEP's, and student discipline. Given local variances in potential costs, program operations, and need for intergovernmental cooperation, NSBA believes that major policy areas such as these should not be addressed without prior consultation with local school systems and their representative organizations. To that end, the document's proposal to publish "on an experimental basis" notices of intent represents an important first step toward involvement and dissemination. However, in dealing with proposed regulations, we find that Department policy is fairly well established and frozen at the publication stage. Presumably, this will be the case in dealing with these proposed policy issues. That is, if school district involvement is limited to comments on "notices of intent," the results will be less than adequate. We believe the memorandum should include, or at least require, that the two offices establish provisions for the routine consultation of local school systems and their representative organizations prior to formal publication of intent.

If approved by the Secretary, this document will effectively represent a major expression of the Department's policies and programs with regard to compliance. In order to further local school district understanding of the Department's total posture on special education, we would applaud any effort by the Department to articulate its overall special education policy, and priorities, under the two laws — of which, presumably, complicance would be one component.

- Coordination of Offices: State Plan Approval/Regional Offices and Bureaucracy

NSBA is fully supportive of the requirement contained in Appendix A at page 8 which would require final approval of state plans within 45 days. Further, we believe that OCR's role to indicate inconsistencies between state plans and §504 is appropriate. However, we believe that the memorandum should specifically limit OCR's state plan role to §504 compliance. Further, the memorandum should indicate that disagreements between OCR and OSE on state plan approval should be resolved within a time certain, e.g., 10 days.

In terms of the development, approval, and implementation of state plans, we are concerned that any efforts to strengthen the role of regional offices may result in inconsistencies with OCR and OSE in Washington, D.C., thereby creating unnecessary complications and bureaucratic layers between the local school systems and the final decision makers. While we do not oppose strong regional offices, we would appreciate some explanation to allay our concern.

- Data Collection: Need for Elaboration, School Board Consultation, Publication in *Federal Register*

Appendix E of the Report sets forth 14 compliance areas which are further presented under 69 sub-priority issues. Although Appendix E summarizes the kinds of data that are available and the kinds of data which are needed for each of these areas, it is unclear as to what precise data may still need to be collected to meet the 69 compliance issues identified by OCR. We would recommend that a clearer statement be made as to whether expanded data collections would be sought, the specifics of those data collections, and their proposed timetables. Until the foregoing information is known, it would be impossible to comment on the 69 data issues and their respective priorities.

In addition, as in the case of policy development, we believe the Report should indicate procedures for involving local school districts and their representative organizations in the development of data collection instruments. History has shown that the failure to do so only invites unnecessary costs and lost time to the local level. Further, once the instruments are developed, they should be published in their proposed entirety in the *Federal Register* for comment.

- Technical Assistance

Appendix F of the Report addresses the vital area of technical assistance. NSBA believes that parents, state and local officials, and school people in general need to be brought together in their understanding of the programs, procedures, language, and policies of the Department of Education in administering the handicapped laws. Accordingly, we are favorably impressed by the dozens of diverse technical assistance efforts expressed by the Report. Surprisingly, however, while the Report specifically mentions administrators, and even mayors and county governments, its outreach strategies do not, at least specifically, mention local school boards. While we are aware of most outreach efforts to local school boards, we believe that, as the local governing bodies responsible for budget and policy, as well as accountability to taxpayers and parents, a more concerted effort of outreach to local school boards, in particular, should be indicated.

- Enforcement: Individual Investigations on Potential Bypass to Establish P.L. 94-142 Due Process Procedures?

Within the area of enforcement, NSBA has a key question with respect to the investigatory process — which presumably OCR can answer with further clarification. Specifically, the Report, as well as OCR officials, indicate that a greater emphasis will be placed upon the investigation of individual complaints. To the extent OCR's investigations of complaints deal with such procedureal safeguards as to whether a school district developed or IEP or accorded due process, an appropriate role is defined. However, to the extent OCR investigations became an alternative to local IEP procedures, especially with OCR officials advancing the standards or elements of specific programs, we believe serious questions would arise. Indeed, under such circumstances OCR would be bypassing the very P.L. 94-142 procedures which it is charged with enforcing, as well as moving into substantive educational programming not unlike the approach which raised such extensive objections to the proposed *Lau* regulations.

- The Report and School Funding

While the Report is a management document, it does suggest new costs for local school districts — regardless of whether those costs relate to yet undefined changes in policy development, data collection, or compliance investigations. The Report should indicate that the two offices will issue estimates of local cost increases for such changes. More importantly, earlier in our testimony, we recommended that the Department develop an overall policy on special eduation, which should place the local costs arising from this Report in context with the federal government's overall policy on funding special education — which it has frozen at 12% of excess costs.

Depending on the magnitude of such costs and the willingness of Congress to provide adequate funding, formal indication of priorities among the activities listed in the Report may need to be indicated. Certainly, we would hope that the Congress would not encourage the Department to pursue new cost items unless it was willing to increase P.L. 94-142 funding.

• Conclusion

NSBA supports efforts by the various offices within the Department of Education to increase the effectiveness and efficiency of P.L. 94-142 and §504 compliance activities. We remain generally positive toward the Report, but believe that the concerns which we have raised should be explained. Further, since the Report is intended to be a management tool, we assume it will not be utilized as a primary authority to justify new activities or major policy changes in existing activities. Obviously the offices which created the Report ascribe certain meanings to the language; and ultimately, the merit of the Report will be in its execution. Assuming NSBA's concerns are resolved, we believe that the Report does represent a major step toward improving the Administration of the laws.

Mr. ERDAHL. Thank you. At this point, the testimony of Lisa Walker will be entered in the record as though read.

STATEMENT OF LISA WALKER, DIRECTOR OF PROGRAMS IN SPECIAL EDUCATION AND REHABILITATION SERVICES, INSTITUTE FOR EDUCATIONAL LEADERSHIP

Ms. WALKER. Mr. Chairman and members of the subcommittee: I appreciate your invitation to testify before the subcommittee concerning the Secretary of Education's "Task Force Report on Equal Educational Opportunity for Handicapped Children." I am commenting on these matters in my capacity as the project director of the education of the handicapped policy project of the Institute for Educational Leadership of the George Washington University. Through this project and other policy development and technical assistance activities over the last 3 years, I have had the opportunity to discuss and work with 26 States and the Commonwealth of Puerto Rico concerning implementation of Public Law 94-142 and section 504 of the Rehabilitation Act of 1973. Previously, I was a member of the staff of the Senate Labor and Human Resources Committee during the development of both Public Law 94-142 and section 504.

The task force report and the memorandum of understanding between the Office of Special Education and the Office for Civil Rights respond to concerns of advocacy groups and State and local policymakers alike that Federal enforcement efforts under Public Law 94-142 and section 504 of the Rehabilitation Act are not timely or consistent, lack clarity of purpose and direction, and fail to produce the desired results, that is, assurance of equal educational opportunity for handicapped children throughout the United States. Although the education advocates coalition report concentrated primarily on the lack of consistent procedures and policies for enforcement of the Office of Special Education, reports and recommendations of such groups as the council of chief State school officers examined the parallel activities and responsibilities of the Office for Civil Rights. Importantly, the task force report reviews the responsibilities of the Office of Special Education and the Office for Civil Rights, as well as the roles of the Office of General Counsel and the Office of Planning and Budget in the Department of Education and coordination with the Department of Justice. This report represents a very important beginning in enforcement coordination and the Department is to be highly commended for the efforts of staff from both agencies and from the Secretary's office, and for the comprehensiveness of their review. Each of the agreements responds to an important area of enforcement and implementation and lays the groundwork for substantial future accomplishments in the areas of coordinated and timely policy development, targeted and effective compliance review, effective complaint processing, and adequate technical assistance and development of data to allow States and the Federal Government to determine the effectiveness of their planning and service delivery efforts. Let me comment on each of these areas more specifically.

Policy development. The adequacy of all efforts at implementation of Public Law 94-142 at this point in history depends upon the ability of responsible agencies at the local, State, and Federal level to clarify and interpret the law and regulations in areas where questions have been raised, or to otherwise provide direction for decisionmaking at the service delivery level. The task force report and the Memorandum of Understanding take several important steps forward here: in laying down a procedure for consultation between OCR and OSE on areas of needed policy development, in finalizing policy questions which have been before the Department for many months, in exploring a procedure for early consultation with the public on areas of proposed policymaking, and in seeking the guidance of the Office of General Counsel to determine guidelines and criteria for the use of regulations, interpretative rules, or other policy statements. The development of a process which will govern policy interpretation will add clarity and consistency to implementation efforts and make communication, both with advocacy organizations and with State and local policymakers and administrators, more stable and productive.

Monitoring and enforcement. The task force report and the memorandum of understanding lay out extensive procedures for the coordination of activities of the Office of Civil Rights and the Office of Special Education on complaint processing and State plan review. These guidelines will assure that both offices are informed about pending issues, that consultation and agreement is completed in a timely fashion and that mechanisms are adopted to provide coordination with comparable State activity. Perhaps most important in this area is the agreement to develop a joint annual compliance review plan, and to begin targeted monitoring and review of State and local implementation. Clearly, the checklist procedures, limited staff, and scattershot approach of the Office of Special Education's program administrative Reviews have been frustrating for staff, advocates, and State and local agencies alike. The development of standards for compliance review and State monitoring, as well as identification of high priority targets for monitoring activity, along with review of "proxy" data, would assure taxpayers and the Federal Government that its review activities were effective, and also usable by State agencies in carrying out their own monitoring responsibilities. The Federal Government cannot effectively police 50-plus States and other jurisdictions on every letter and word of the law, and should be using its resources in a way that identifies priority problem areas and strategies which all parties can follow. In addition, plans for joint training of OCR and OSE staff, as well as joint involvement in compliance reviews, will offer better use of staff resources and capabilities.

Technical assistance. Coordination of the regional office staff with OSE's regional resource centers, undertaking the needs assessment and review of a plan for future technical assistance by the public is timely. However, the Department needs to consider staffing and other resource strategies which will enable the forthcoming plan to be carried out most effectively.

Capacity to implement the report: The task force report and the memorandum of understanding between the Office of Civil Rights and the Office of Special Education represents a substantial undertaking and commitment by two agencies with different histories, operating procedures, and organizational goals. It has taken enormous investment of time and energy for these two agencies to begin this effort at policy and administrative coordination. At this point their agreement represents an internal agreement of cooperation and coexistence, one which has great hope and promise for the future and will depend on each agency and the Department continuing to push for further agreement. The following points need to be pursued by the subcommittee in its oversight of this report.

Subcommittee oversight. All of our experience with interagency agreements in the last several years indicate that agreements to consult and to agree will not get much further without dogged persistence and commitment from top level policymakers and outside political forces to encourage the agencies to keep working at their coordination and sorting out of functions. Most of the promise of the Secretary's task force report depends on continued delivery on dates and agreements at a later time.

With leadership change coming in the next several months, OSE and OCR need encouragement to continue the fine work they have done until this point. I would therefore recommend that the subcommittee closely watch the milestones and agreements that the agencies have set. Second, the subcommittee should plan another oversight hearing 4 to 6 months from now to publicly air the continued progress toward implementation of these agreements.

Input from State and advocacy organizations. Agreement to date has been centered on the working relationships and coordination of timeliness between OSE and OCR. The Department and both agencies should establish a consulting group of State and advocacy organizations to coordinate the current agreement with the concerns of those outside organizations.

Resources. Some of the difficulties which have occurred between the Office of Special Education and State government in implementing this law have been the result of inadequate time, procedures, and staff to consult with the States and communicate clearly as to what is required and not required under the Federal law. The strongest possible coordination agreement will not take the place of adequate resources, procedures and attitudes to assure that this is done.

Policy development. Pending policy issues should be reviewed and a decison made one way or the other to finalize them or take alternate action to remove them from the current approval process and pursue other strategies.

Both agencies need to develop a process not only for their own agreement on important policy questions but also consultation with interested individuals, organizations, and agencies.

Monitoring and compliance. Development of compliance and monitoring standards for use by the States should be undertaken by the Department, along with a clarification of State and Federal roles and responsibilities for monitoring the enforcement. The Federal Government should set these standards, and then hold the States responsible for their own monitoring and enforcement. Until these roles are made clear, all levels of government will continue to pass the buck as to who is at fault.

Guidelines should also be developed by the two offices and the Department as to the use of enforcement procedures and remedies, and how these procedures are triggered.

Both agencies need to review their current agreement in light of the concerns of the public and interested agencies and organizations.

[The prepared testimony of Lisa Walker follows:]

PREPARED TESTIMONY OF LISA J. WALKER, DIRECTOR, PROGRAMS IN SPECIAL EDUCATION AND REHABILITATION SERVICES, INSTITUTE FOR EDUCATIONAL LEADERSHIP

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Mr. Chairman and Members of the Subcommittee:

I appreciate your invitation to testify before the Subcommittee concerning the Secretary of Education's Task Force Report on Equal Educational Opportunity for Handicapped Children. I am commenting on these matters in my capacity as the project director of the Education of the Handicapped Policy Project of the Institute for Educational Leadership of The George Washington University. Through this project and other policy development and technical assistance activities over the last three years, I have had the opportunity to discuss and work with twenty-six states and the Commonwealth of Puerto Rico concerning implementation of P.L. 94-142 and section 504 of the Rehabilitation Act of 1973. Previously, I was a member of the staff of the Senate Labor and Human Resources Committee during the development of both P.L. 94-142 and section 504.

The Task Force Report and the Memorandum of Understanding between the Office of Special Education and the Office for Civil Rights respond to concerns of advocacy groups and state and local policymakers alike that federal enforcement efforts under P.L. 94-142 and section 504 of the Rehabilitation Act are not timely or consistent, lack clarity of purpose and direction, and fail to produce the desired results, that is, assurance of equal educational opportunity for handicapped children throughout the United States. Although the Education Advocates Coalition report concentrated primarily on the lack of consistent procedures and policies for enforcement of the Office of Special Education, reports and recommendations of such groups as the Council of Chief State School Officers examined the parallel activities and responsibilities of the Office for Civil Rights. Importantly, the Task Force Report reviews the responsibilities of the Office of Special Education and the Office for Civil Rights, as well as the roles of the Office of General Counsel and the Office of Planning and Budget in the Department of Education and coordination with the Department of Justice. This Report represents a very important beginning in enforcement coordination and the Department is to be highly commended for the efforts of staff from both agencies and from the Secretary's office, and for the comprehensiveness of their review. Each of the agreements responds to an important area of enforcement and implementation and lays the groundwork for substantial future accomplishments in the areas of coordinated and timely policy development, targeted and effective compliance review, effective complaint processing, and adequate technical assistance and development of data to allow states and the federal government to determine the effectiveness of their planning and service delivery efforts. Let me comment on each of these areas more specifically.

Policy Development

The adequacy of all efforts at implementation of P.L. 94-142 at this point in history depends upon the ability of responsible agencies at the local, state and federal level to clarify and interpret the law and regulations in areas where questions have been raised, or to otherwise provide direction for decisionmaking at the service delivery level. The Task Force Report and the Memorandum of Understanding take several important steps forward here: in laying down a procedure for consultation between OCR and OSE on areas of needed policy development, in finalizing policy questions which have been before the Department for many months, in exploring a procedure for early consultation with the public on areas of proposed policymaking, and in seeking the guidance of the Office of General Counsel to determine guidelines and criteria for the use of regulations, interpretative rules or other policy statements. The development of a process which will govern policy interpretation will add clarity and consistency to implementation efforts and make communication, both with advocacy organizations and with state and local policymakers and administrators, more stable and productive.

Monitoring and Enforcement

The Task Force Report and the Memorandum of Understanding lay out extensive procedures for the coordination of activities of the Office of Civil Rights and the Office of Special Education on complaint processing and state plan review. These guidelines will assure that both Offices are informed about pending issues, that consultation and agreement is completed in a timely fashion and that mechanisms are adopted to provide coordination with comparable state activity. Perhaps most important in this area is the agreement to develop a joint annual compliance review plan, and to begin targeted monitoring and review of state and local implementation. Clearly, the checklist procedures, limited staff, and scattershot approach of the Office of Special Education's Program Administrative Reviews have been frustrating for staff, advocates and state and local agencies alike. The development of standards for compliance review and state monitoring, as well as identification of high priority targets for monitoring activity, along with review of 'proxy' data, would assure taxpayers and the federal government that its review activities were effective, and also useable by state agencies in carrying out their own monitoring responsibilities. The federal government cannot effectively police 50-plus states and other jurisdictions on every letter and word of the law, and should be using its resources in a way that identifies priority problem areas and strategies which all parties can follow. In addition, plans for joint training of OCR and OSE staff, as well as joint involvement in compliance reviews, will offer better use of staff resources and capabilities.

Technical Assistance

Coordination of the regional office staff with OSE's regional resource centers, undertaking the needs assessment and review of a plan for future technical assistance by the public is timely.

However, the Department needs to consider staffing and other resource strategies which will enable the forthcoming plan to be carried out most effectively.

Capacity to Implement the Report

The Task Force Report and the Memorandum of Understanding between the Office of Civil Rights and the Office of Special Education represents a substantial undertaking and commitment by two agencies with different histories, operating procedures and organizational goals. It has taken enormous investment of time and energy for these two agencies to begin this effort at policy and administrative coordination. At this point their agreement represents an internal agreement of cooperation and co-existence, one which has great hope and promise for the future and will depend on each agency and the Department continuing to push for further agreement. The following points need to be pursued by the Subcommittee in its oversight of this Report.

--Subcommittee Oversight

o All of our experience with interagency agreements in the last several years indicate that agreements to consult and to agree will not get much further without dogged persistence and commitment from top level policymakers and outside political forces to encourage the agencies to keep working at their coordination and sorting out of functions. Most of the promise of the Secretary's Task Force Report depends on continued delivery on dates and agreements at a later time.

With leadership change coming in the next several months, OSE and OCR need encoragement to continue the fine work they have done until this point. I would therefore recommend that the Subcommittee closely watch the milestones and agreements that the agencies have set. Secondly, the Subcommittee should plan another oversight hearing four to six months from now to publicly air the continued progress toward implementation of these agreements.

--Input from State and Advocacy Organizations

o Agreement to date has been centered on the working relationships and coordination of timelines between OSE and OCR. The Department and both agencies should establish a consulting group of state and advocacy organizations to coordinate the current agreement with the concerns of those outside organizations.

--Resources

o Some of the difficulties which have occurred between the Office of Special Education and state government in implementing this law have been the result of inadequate time, procedures and staff to consult with the states and communicate clearly as to what is required and not required under the federal law. The strongest possible coordination agreement will not take the place of adequate resources, procedures and attitudes to assure that this is done.

--Policy Development

- o Pending policy issues should be reviewed and a decision made one way or the other to finalize them or take alternate action to remove them from the current approval process and pursue other strategies.
- o Guidelines for the use of regulations, interpretive rules or other policy statements should be developed by the Office of General Counsel as soon as possible and both the Office of Civil Rights and the Office of Special Education should develop standards for policy based on the substance and requirements of P.L. 94-142, and the roles of federal, state and local government.
- o Both agencies need to develop a process not only for their own agreement on important policy questions but also consultation with interested individuals, organizations and agencies.

--Monitoring and Compliance

- o Development of compliance and monitoring standards for use by the states should be undertaken by the Department, along with a clarification of state and federal roles and responsibilities for monitoring and enforcement. The Federal government should set these standards, and then hold the states responsible for their own monitoring and enforcement. Until these roles are made clear, all levels of government will continue to pass the buck as to who is at fault.
- o Guidelines should also be developed by the two offices and the Department as to the use of enforcement procedures and remedies, and how these procedures are triggered.
- o Both agencies need to review their current agreement in light of the concerns of the public and interested agencies and organizations.

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September 16, 1980

COMMENTS ON THE POLICY STATEMENT OF THE COUNCIL OF CHIEF STATE SCHOOL OFFICERS ON IMPLEMENTING P.L.94-142

These comments are offered as a way of more clearly defining for discussion the issues and concerns raised in the Council's paper.

I. Plan Approval Process

The state plan required under P.L.94-142 is unlike other required state plans in that it is not a set of statements about actions which are to occur in the future, but statements which describe current policy, ongoing process and procedures, and standards,which when taken together, demonstrate that a free appropriate public education is available to all handicapped children within a state. Thus, a state must demonstrate in the plan that the effect of the processes and procedures is to achieve compliance with the substantive requirements of P.L.94-142.

A. The State Plan should not be viewed as a vehicle for substantiating current year compliance.

Because the state plan must demonstrate that the effect of the processes and procedures is to provide a free appropriate public education to handicapped children, if the processes and procedures are not resulting in such an education, then the state plan must be questioned.

B. A new Plan should not be held by the Office of Special Education pending resolution of LEA complaints; Approval of future Plans should not be subject to the resolution of pending investigations.

A Plan should be held up for a brief period of time and disapproved if there is failure by an LEA to correct violations determined by OSE/OCR and failure by the SEA to provide direct services or to require the LEA to comply.

The Plan should not be held-up for more than ninety days to permit volutary negotiation before an approval/disapproval decision.

The Plan approval should not be held up pending investigation; this action should be taken only after a finding of non-compliance.

C. Separate and distinct processes should exist to resolve local district complaints.

Yes, the complaint investigation/resolution process should be separate from the review of the state plan except where the complaint directly challenges an SEA responsibility. However, the status of identified, but uncorrected violations at the time of plan approval/disapproval should be determinative.

D. Approval of the State Plan should be limited to state level compliance.

Yes, but 'state level compliance' is more than just the statement of processes and procedures. State level compliance directly involves active general supervision and monitoring (against SEA and P.L.94-142 standards), child find, procedural safeguards, etc. Therefore, uncorrected local non-compliance is part of, and directly bears on, the existence of state level compliance.

E. Local District complaints should be resolved through procedures outlined in the State Plan.

Yes, SEA complaint resolution procedures should be included in the State Plan and govern SEA resolution. However, both OSE and OCR have complaint investigation procedures which are established by Regulations or court order and also affect complaint resolution.

F. OSE should demonstrate that a compliance issue is statewide before withholding any state's allocation.

OSE should be able to assert that violations of P.L.94-142 are occurring within the state which directly indicate a failure by the SEA to carry out SEA responsibilities (such as those for child find, availability of SEA standards, due process procedural violations, confidentiality, surrogate parents, interagency coordination).

H. Recommendations

OSE should establish and disseminate a plan approval process.	Agreed.
1. The technical assistance process and informal negotiation process should be carried out as long as necessary.	1. To some extent, this can conflict with specific timelines. During the 'informal' process, what involvement is there for parent and advocacy groups?
2. There should be formal notification to the state that a plan has been received.	2. Yes. But is this on the formal plan or during the 'informal' process, and if on the 'informal' submission public should also be notified.
The formal submission date is indicated by a letter of intent from the SEA to OSE.	This is probably too informal and leaves the timing of the process entirely up to the state. OSE instead should establish a uniform date (say, April 1) for formal plan submission.
There should be a sixty day period from formal submission to approval.	O.K., and the plan is approved if not disapproved by June 1. If the plan is not received by a reasonable period after the formal submission date, it should be immediately and automatically disapproved. (Reasonable period-10-15 days)

	There should not be a prior 'intent to disapprove' notice, as states will have been in contact with OSE and will be aware of the outstanding noncompliance issues.
If the SEA submits major changes in the plan before approval/disapproval then an additional 60 day period begins.	SEA may submit changes at any time; OSE may extend time for approval or disapproval for 30 days.
If both agree, there may be an additional thirty day extension.	
The Secretary shall review the disapproval appeal within 30 days.	O.K.
The new Plan approval process should apply to amendments to the 1980 3-year plan.	O.K.
OSE should address the need for technical assistance and consistent information on the part of its staff.	O.K. A loose-leaf reporting system should be developed to provide information on a timely basis to be used by all DAS/OCR staff. Training in monitoring and technical assistance should be provided to all DAS/OCR staff.

II. OSE/OCR Relationships

A. There have been inconsistent policy interpretations between OCR and OSE regarding services that P.L.94-142 requires and LEA responsibilities.

This is a problem where the interpretations relate to P.L.94-142. However, section 504 does require services that P.L.94-142 does not necessarily require (i.e., responsibilities of general education) and section 504 does have an impact/outcome standard within its definition of appropriate education.

B. Meeting the requirements of P.L.94-142 is one way to comply with the education portion of section 504.

Yes, in general, but section 504 overlap is only with respect to special education and related services not all aspects of education. OSE should conform its policy interpretations (e.g., LRE, 'free education') to section 504 standards, just as OCR should accept IEP and procedural safeguard systems which meet P.L.94-142 standards. OSE approval procedures should not subsequently be challenged by OCR, but OSE does not 'approve' services as part of the State Plan process. Services are child specific under P.L.94-142.

C. Policy Interpretations developed by OSE should be accepted by OCR.

Yes, if a joint policy development process is utilized and available to the public. A procedure which might be utilized would be to allow individuals to initiate policy development action through a request-for-ruling process.

D. State remedies should be exhausted first to avoid confustion and duplication of effort re: LEA complaints.

Under the consent order in Adams v. Hufstedler, OCR cannot alter the court approved timeframes for complaint investigation and resolution.

E. OCR should notify SEA of LEA compliance investigations and should provide specific information about the investigations.

Yes, although information can only be provided generically because of confidentiality requirements.

F. OCR and OSE should conduct joint (non-repetitive) investigations.

Yes.

G. OCR should not interrupt the state resolution process, reverse fair hearing procedures or overrule state decisions without hearings of their own or reviewing appropriate documents.

OCR has an independent obligation to investigate and resolve complaints pursuant to court established timeframes and procedures. OCR cannot defer to (i.e., not 'interrupt') SEA proceedings but must take independent action. While OCR must consider all pertinent information before reaching compliance decisions (including information in the possession of the SEA), it cannot accepted 'fair hearing decisions' made by a state education agency. OCR should not review directly these fair hearing decisions, but must make independent judgements based on the information available.

H. Recommendations

1. Standards against which a complaint is investigated should be the state plan.	1. The standards also include the regulations and statutes under which the state plan is submitted. Where the state plan does not conflict and contains additional standards, these standards should be applied.
2. OCR should not be able to overturn a P.L.94-142 state fair hearing decision. Courts should be the forum for resolution.	2. Both P.L.94-142 and section 504 were intended to avoid judicial action, and administrative procedures set up to review compliance are intended to accomplish that goal. Administrative review of conformance with both statutes short of court rulings must be carried out.

3. OCR should establish a systematic process for complaint investigation which includes notification to the states.	3. O.K.
4. OCR should not be able to overturn an OSE compliance decision or approved state policy or procedure.	4. OCR has a duty regardless of OSE actions to require an SEA to meet its responsibilities to ensure all handicapped children a free appropriate public education. Both agencies are bound by redefinition of policy by the federal courts. Both agencies, however, should cooperate fully to avoid inconsistencies.
5. A cross-cutting unit in OSE, OCR or the Undersecretary's office should be set up to coordinate efforts.	5. Yes.

III. Standards and Criteria to Meet P.L.94-142

OSE/DAS does need a mechanism for policy development and decision-making which is timely. The four categories outlined in the Council's paper should be reviewed further, for problems and discrepancies. In general, the policy development process should enable OSE to:

--make timely determinations of compliance or noncompliance with the standards set out in P.L.94-142 and its regulations (and section 504 and its regulations)

--review state policy and procedures in a way which allows OSE to make a decision as to whether they have the effect of assuring handicapped children a free appropriate public education

--enable OSE to set standards based on the law and regulations which clarify and carry out the intent of P.L.94-142.

IV. Supervision of Interagency Responsibilities

Note oral comments.

This paper was put together quickly for a meeting with CCSSO's Federal Liaison representatives. A revised version is in process, but this is being distributed for information purposes.--Lisa Walker

Mr. **Erdahl.** Next we have Fredrick Weintraub, Assistant Director for Governmental Affairs, Council for Exceptional Children.

STATEMENT OF FREDRICK WEINTRAUB, ASSISTANT DIRECTOR FOR GOVERNMENTAL RELATIONS, COUNCIL FOR EXCEPTIONAL CHILDREN

Mr. **Weintraub.** We thank you for the opportunity to appear before this distinguished panel of the U.S. House of Representatives to offer the views of the Council for Exceptional Children regarding the "Final Report to the U.S. Secretary of Education of the Task Force on Equal Educational Opportunity for Handicapped Children" (October 15, 1980). May we also take this opportunity to express to you the continuing admiration and warm appreciation of the membership of the Council for your unrelenting efforts on behalf of America's exceptional children.

The Council for Exceptional Children is a national organization with a membership of approximately 65,000 professionals in the field of special education. One of the most fundamental ongoing missions of the Council, which has brought us to Capitol Hill on so many occasions over the last 20 years, is to seek continual improvement of Federal provisions for the education of America's exceptional children and youth, both handicapped and gifted.

It is the Council which worked so closely with this subcommittee throughout the 1970's in the development, passage, and implementation of Public Law 94-142. And, it is the Council which again comes before this panel to reiterate its continuing support for the intent and provisions of Public Law 94-142.

We would like to reiterate our support of the intent of that law.

Mr. Chairman, as you well know, a number of criticisms have developed over the year relative to the lack of adequate interaction, in the performance of their policy development and compliance duties, between the U.S. Office of Special Education and the U.S. Office for Civil Rights. The range of complaints has included: lack of enforcement coordination, lack of specificity respecting what is formal policy, and apparent inconsistency in Federal positions respecting Public Law 94-142 and section 504. Through your extensive oversight hearings during the course of the 96th Congress, you and your colleagues on this committee have heard many of the criticisms in this area.

Last spring, a few organizations, referring to themselves as the education advocates coalition, chose to make their public target the U.S. Office of Special Education (formerly BEH). From the outset, the Council for Exceptional Children argued that it was neither useful nor fair to pick out any single agency to bear the full brunt of criticism. An OSE, the Council argued, has certain discreet functions, procedures, and resources that are quite different from an OCR, and vice versa. One agency could not be asked to shoulder the responsibility for the behavior of the other. We commend the Secretary and endorse the general thrust of the report. However, we do have specific concerns.

First of all, we are very, very concerned about the issue of data collection. Public Law 94-142 has as its basic intent and purpose, a process of making individual determinations about the appropriate education of a handicapped child. It was a clear effort on the part of the Congress to say that such determinations cannot be made on a class basis, they could only be made on an individual child basis. Thus a process was established ranging from consultation with parents, through procedural safeguards, et cetera, to assure a procedural mechanism for a determination as to what was right for Johnny and Mary as opposed to what was right for all blind or deaf children.

We are concerned that the attempt to establish statistical modes of what is right or wrong, we believe that effort needs to be curtailed, needs to be examined very, very carefully.

A major objective as I mentioned before of the framers of Public Law 94-142 was to move away from the highly judgmental noncompliance decision based on data collection based on a particular groups notion based on imperical criteria. We urge this section of the report be seriously considered.

On the matter of policy development, we concur that there is a need for policy clarification. There are a number of issues in Public Law 94-142 which require more clarification in order to facilitate an effective delivery system. We are concerned about what has become in the words of some the policy-of-the-month club, where basically the OCR issues a ruling and in some cases the OSE leaks a policy paper and everybody jumps without tremendous clarity as to what is or is not policy.

While on the one hand we suggest that policy is needed, on the other hand we have great concern about the policy areas cited in the report, psychotherapy, catheterization, insurance, suspension, expulsion, and surrogate parents.

We believe, other than the policy clarification on individual programs, we believe the others are the cart before the horse. One cannot define psychotherapy without first defining "related services." We need explanation of what is a related service. We believe, as Ms. Tufts indicated, as Dr. Frazier indicated, that there have been forums created where there are suggestions how this best could be done, but in order to do that, and using the words of Dr. Hall, the Department will have to be proactive rather than reactive. We need policies based upon a proactive approach in implementing the law, rather than reacting to specific complaints.

We are concerned, as has been expressed by other witnesses, that the report basically describes how two groups of bureaucracies will in fact make decisions. We believe that is important. However, we are disappointed that within that report it does not talk about how others will participate in those decisions. We believe there is a lot of advice and good ideas both from the standpoint of consumers, providers, and State and local government that could go into the development of effective policy. We would like to see that mechanism reflected in the agreement.

On the question of State plans I would like to make three brief points.

First, we commend the Office of Education for defining a definitive time period as to State plans. We believe the State plans will be approved, but where there are problems with the State plans they can become clear to everybody involved and attempts to resolve them can be undertaken.

Second, we are concerned that the Memorandum of Understanding refers to, for example that the OCR will be given a copy of the State plan for review, this makes an assumption that there is such a thing as a State plan and that that is in fact a document somebody can pick up and read. That is not in fact the case. What they are, are amendments to amendments, what they are, are documents making reference to hundreds of other documents, regulations, et cetera, and no consumer or OCR official can possibly pick that document up, read it, and understand it.

It is our suggestion that there be required to be an intact State plan. The Congress in its wisdom, for example, placed in the law that the citizens of a State should have an opportunity to review the State plan and comment on it before it is submitted. That presumes again that it is readable, understandable, and intact. We suggest that the Congress make it clear that it would like to require that or clarify it in legislation.

Third, we would like to address the delicate issue of what constitutes the basis for approval or disapproval of a State plan.

Public Law 94-142 indicates if there is a failure to comply, it must be a substantial failure. One complaint did not constitute a substantial failure. What has happened is that the OCR has gottan a complaint and the approval of a State plan has been held hostage to the approval of that complaint. The law specifies that the State agency withhold money to a school district that does not comply, rather than the Federal Government withholding money to a State when a particular school district did not comply.

We think it important that we go back to the basic notions of the law, respecting the role of the State as the primary compliance agency and the responsibility of the Federal Government to hold the State responsible, but not the Federal Government involving itself and in a sense usurping the role given the State by the Federal law.

Finally, two points that deal with compliance.

Compliance can only be achieved to the degree to which there is the technology, methodology, and professional capacity to do it.

For example, we have heard discussion today, Mr. Erdahl, you expressed some concern in your question as to nondiscriminatory assessment. There is no question that there has been prejudice and mistreatment of minority children in educational placement. We think much progress has been made. We could send compliance officers out to correct the problem but it would still exist, because there is no technology. The plan did not address how the technology for compliance will be developed.

The Federal Government has a research and training authority. What we suggest is that those research and training authorities be used to develop technology to train people to use the technology, and we may find a lot of the problems will be eliminated if we give the people the tools necessary. We can have all the technical assistance in the world, but if the technology is not there, it is not worth much.

We suggest there is more to compliance than that which has been addressed in the reviews. We would contend that no effort is being made as to compliance or any of the Federal process as to those directly relating to children's and families' rights. Without looking at other issues in the regulations, what we will find is that the education the children receive would be hollow.

That would bring me to my last point not in the testimony. Given that this has been a larger set of hearings than on just the Memorandum of Understanding, we would hope in the next decade the focus would be on quality of education. Compliance with Public Law 94-142 does not mandate quality. We have made tremendous progress. Before this law was passed, over a million children sat at home. Today they go to school. What concerns me is if we define the only goal the Federal Government is to achieve in compliance with this law, in the long run we may hurt the handicapped children because we have not addressed the issue of the quality of the education.

I would hope this subcommittee once it has closed its hearings on Public Law 94-142 would open hearings as to the role of the Federal Government in the improving the quality of education of handicapped children.

[The prepared statement of Frederick Weintraub follows:]

PREPARED STATEMENT OF FREDERICK J. WEINTRAUB, ASSISTANT EXECUTIVE DIRECTOR, GOVERNMENTAL RELATIONS, THE COUNCIL FOR EXCEPTIONAL CHILDREN

Mr. Chairman:

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Mr. Chairman, as you well know, a number of criticisms have developed over the years relative to the lack of adequate interaction, in the performance of their policy development and compliance duties, between the U.S. Office of Special Education and the U.S. Office for Civil Rights. The range of complaints has included: lack of enforcement coordination, lack of specificity respecting what is formal policy, and apparent inconsistency in federal positions respecting P.L. 94-142 and Section 504. Through your extensive oversight hearings during the course of the 96th Congress, you and your colleagues on this Committee have heard many of the criticisms in this area.

Last spring, a few organizations, referring to themselves as the Education Advocates Coalition, chose to make their public target the U.S. Office of Special

Education (formerly BEH). From the outset, The Council for Exceptional Children argued that it was neither useful nor fair to pick out any single agency to bear the full brunt of criticism. An OSE, the Council argued, has certain discreet functions, procedures and resources that are quite different from an OCR, and vice versa. One agency could not be asked to shoulder the responsibility for the behavior of the other.

The Department of Education had, at that time, just come into being. Consequently, CEC strongly urged, in conjunction with other groups, that the new Secretary of Education inaugurate a Secretary-level Task Force to deal with these problems, including the Office of Special Education and Rehabilitative Services, the Office for Civil Rights, and other involved agencies, along with representatives of the Department of Justice. The Secretary did so, and we congratulate her for this responsible action.

We appreciate the opportunity to testify respecting the Task Force's Final Report to the Secretary. May we say initially that we endorse the general thrust of the Task Force's recommendations and the Memorandum of Understanding between the Assistant Secretary for Special Education and Rehabilitative Services and the Assistant Secretary for Civil Rights. The achievement of ongoing interaction between OSE and OCR (and among other agencies, both federal and state) respecting enforcement issues, policy development issues, and technical assistance issues is crucial, and the Task Force recommendations plus the Memorandum are a first step.

While we endorse the general thrust and direction of the Memorandum of Understanding and consequent recommendations to the Secretary, we would like to point out specific concerns of The Council for Exceptional Children.

Data Collection

We wish to lodge a serious note of caution in this area. The essence of the conceptual base of P.L. 94-142 was to individualize special education decision making for handicapped children. It is the implementation of, and effectiveness of each child assessment, each individualized education program and each particular accessibility to full procedural protections that determines compliance under P.L. 94-142. Statistical information received from a given state or a given school district respecting such matters as the number of children placed in certain special education instructional environments and the number of children of specific racial or ethnic heritage placed in certain special educational environments is not at all helpful in making responsible determinations respecting compliance under P.L. 94-142. It is the maintenance of and the performance of the essential procedural mechanisms of P.L. 94-142, in concert with conforming state policy, both systemically and as they impact upon each individual child or youth, that determine whether the spirit and the letter of the law are being fully complied with. A major objective of the framers of P.L. 94-142 was to move away from the highly judgmental compliance/noncompliance decision making which emanates from data collection based upon a particular group's notion as expressed through "empirical criteria" (see page 5 of the Task Force introduction) as to what constitutes compliance. We urge that this section of the Report be reconsidered.

Policy Papers

CEC congratulates the Task Force in its intent to put some rhyme and reason into the OSE and OCR process of policy development, promulgation and dissemination. Frankly, universal confusion has prevailed among professionals across the Country in understanding first what is the policy on certain key issues. This is partially due to a lack of policy, but also to inconsistency of policy among agencies and lack of continuity of policy. In fact, the field has literally been tyrannized by what many now call the "Policy Paper of the Month Club," namely, "draft" policy papers drifting out of OSE, and numerous OCR regional decisions.

At the same time, the actual content of policy statements and policy papers finally promulgated by OSE and OCR is a gravely serious matter. The Task Force Report states that efforts are underway to "speed publication of Department policy in a number of key areas." Priority policy areas are then cited: psychotherapy, catheterization, insurance, individualized education programs, suspension and expulsion, and surrogate parents. CEC, on behalf of the professionals and the children which it represents, has grave concern respecting the policy papers under development, and we suggest that all of these policy papers, except the paper on individualized education programs, be reconsidered.

Permit us to cite an example of our concerns. Any policy specifically addressing "psychotherapy" would constitute a classic example of "cart before the horse" policy clarification. The larger, essential issue about which concerned professionals require guidance is: How does one determine what constitutes a required related service for a particular handicapped child receiving special education. A coherent, overall policy respecting related services is urgently required, before a rationale discussion of "psychotherapy" can take place.

Bureaucrats Only

We observe in the Report that a number of bureaucratic groups will now be formally convened out of OCR and OSE and other federal agencies, such as a data planning group and a technical assistance planning group. Nowhere in the Final Report to the Secretary of Education by the Task Force do we find a statement of intent to involve, in any of the procedural mechanisms established, experts and other interested parties outside of the federal bureaucracy itself. We assume that there will be such input, and on a regular basis, but we are more than mildly surprised that such essential input is never mentioned. Obviously, the Department would make a grave mistake by excluding the expert advice on a systematic basis of professionals across the country who must actually carry out any decisions ultimately finalized by OSE and OCR.

State Plans

Permit us three comments regarding state plans. First, we congratulate OSE for establishing a definitive time period for the processing of state plans. Second, we observe the following in the Memorandum of Understanding (page 8): "Within 5 calendar days of receipt of the State plan, OSE will provide OCR with a copy of the State plan for review." Everyone knows that "copy of the State plan" is a phrase describing a myth. All too often the state plan, whether in development or finalized, is a disorganized collection of varying documents, including assorted memoranda of agreement, references to past plans, checklists for monitoring, pieces of state regulation, court cases and Attorney General opinions, or nothing more than a collection of often unavailable references to the preceding. Perhaps OCR and OSE officials will be able to translate all of this in such a way as to achieve a responsible review of a given state plan. But we ask, as we have many times before: How can the ordinary concerned citizen ever hope to successfully review such an incoherent document? The Congress, in P.L. 94-142, specifically charged that state plans be available for public review. We would suggest that an unreviewable collection of papers may constitute, though unintended, a form of citizen inaccessibility. We therefore urge that states be required to develop intact state plans.

Third, we wish briefly to address the delicate issue of what constitutes the basis for approval or disapproval of a particular state plan, especially now that a state plan review function for OCR has been recommended by the Task Force. In the matter of disapproval of state plans, P.L. 94-142 requires a "...failure to comply substantially..." (Sec. 616(a)(I)). There is understandable concern among the states, to offer the worst case possibility, that one complaint alleging failure to comply on a particular issue by a single school district, submitted to a regional OCR office, could mean undue delay of approval or outright disapproval of a particular state plan. It must be borne in mind that the state plans address state policy and state-wide adherence to that policy as a matter of compliance with P.L.

94-142. There is no doubt that failure to comply significantly system-wide on a particular issue, especially when the state education agency has failed or refused to achieve compliance, should constitute a basis for state plan disapproval. P.L. 94-142 further empowers the U.S. Secretary of Education to order the state to withhold payments under the Act to "...specified local educational agencies or intermediate units..." when there is evidence of noncompliance in localized, not statewide, instances. Clearly, then, the framers of P.L. 94-142 did not intend that an alleged noncompliance on a localized basis or even a finding of noncompliance on a localized basis should mean the delayed approval or disapproval of a state plan and the consequent withholding of funds to an entire state. We trust that both OSE and OCR will adhere to this vital distinction as written into P.L. 94-142. While CEC would be the first to support full compliance in any school district, we would nonetheless advise the U.S. Department of Education: "Let the punishment fit the crime."

What Constitutes Compliance?

We would like to close our comments with a few words on the need for both OCR and OSE to explore very carefully the full complexities of particular educational situations when they are considering a rendering of noncompliance. First, it must be borne in mind that full compliance, namely, an appropriate education for each child, is only as achievable as levels of current methodology, technology and professional planning will allow. For example, nondiscriminatory assessment can only be guaranteed at a level equal to the level of current assessment technology. Concurrently, instruction can only be equal to the current state of the art in curriculum and teaching methodology. This is also a plea to the Congress to support the research and training necessary to improve educational technology and professional capabilities.

Second, an appropriate education for each handicapped child is more than just a program in the least restrictive environment. It is a program in the least restrictive environment presided over by special education and related services personnel who are qualified to teach handicapped children. The special education profession, as well as parents, are increasingly concerned that unqualified personnel are being employed to educate handicapped children, although federal regulations make such practices a violation of P.L. 94-142. We are concerned that such issues are not being examined in federal compliance reviews.

Conclusion

May we say in closing, Mr. Chairman, that we congratulate both you and the distinguished Members of this Committee for providing this prompt and constructive legislative oversight of the Department of Education, OSE/OCR, Memorandum of Understanding. We hope that both this Congress and the in-coming 97th Congress will affirm the basic objective of this important dual agency agreement. Further, we hope that the Congress and the in-coming Administration will consider modifying the agreement to reflect some of the views expressed at this hearing and support the continuing implementation of the agreement.

Mr. ERDAHL. Thank you.

Do you see the need perhaps for a statutory requirement to get the involvement of States, or can that be done just by commonsense and coordination?

That brings up another question to Mr. Weintraub: Are there any States that have put together a pamphlet explaining their State plan?

How do we get this consultation and cooperation? How can that be achieved? Is that to be mandated?

Mr. WEINTRAUB. I, first of all, would hope my comments not be taken as criticism of the people who work across the street in the Federal agencies. I think they are doing their darndest, they are understaffed, they are responding to many, many pressures, and it is difficult to do the job they have to do.

I think the chief need at this point, I think that communication and consultation can be there if the system becomes more proactive, if it stops and says we have heard the oversight hearings on Public Law 94-142, what are the key issues we have to deal with? We need to define "related services." That is something that has been heard throughout these hearings. Let us bring together the forces that need be on that. But dealing with issues of should a child get 4 hours versus 5 hours of hydrotherapy, that never has the capacity to deal with the broader issues which would resolve the larger problems.

I think advice and guidance from this subommittee would be most helpful in that regard.

Ms. TUFTS. I would agree with Fred. I think there is an avenue that can get people together and provide a forum. It needs to be done, but has not been done. CEC has proven it can be done, and I certainly think the Office of Education can do the same kind of thing in a systematic way involving all those issues involving State and local people.

Mr. **Erdahl**. Mr. Weintraub, as part of your prologue, you brought up your concern for quality education. I am assuming you include every child regardless of their mental or physical condition.

The first thing that comes to mind is how can this be improved, and what can the Federal Government do to improve it?

Mr. **Weintraub**. Primarily, that was the primary role of the Federal Government. In the area of secondary education, we went through several decades dealing with certain methodologies and curricula. The Federal Government played a major role in that. The Federal Government in terms of providing quality special educators played a major role in supplying educators. The University of Minnesota is a fine place where people have been trained to do research and other things, as well as other colleges in Minnesota. The Federal Government needs to play a major role in keeping that system alive.

The problem is now, since Public Law 94-142, all those energies both from the standpoint of university resources have all gone into compliance, where the assumption becomes that the ultimate goal is compliance. I in no way want to suggest let us move away from compliance. But I would like this committee to call the OSE before you and ask what are you doing to improve the quality of education for handicapped children. What I am saying is while I appreciate what we have gone through in the last decade as to compliance, it is time to say it is enough of that, let us get on to the other group of tasks. There are other authorities under this, 94-142 is only a part of the law, it is time to get back to the rest of it.

Ms. **Tufts**. I agree with Mr. Weintraub on this. In fact he and I were talking earlier as to studies that need to be done as to preschool handicapped. I think research and training is a whole area that has been lost.

Mr. **Erdahl**. Thank you very much for your input.

That concludes the list of witnesses we have, and the hearing stands adjourned.

[Whereupon, at 12 noon, the subcommittee was adjourned.]

APPENDIX

PREPARED STATEMENT OF THE AMERICAN CORRECTIVE THERAPY ASSOCIATION

POSITION PAPER
CORRECTIVE THERAPY SERVICES TO HANDICAPPED CHILDREN

(Adopted July 1979)

The American Corrective Therapy Association strongly advocates that services of Certified Corrective Therapists be made available to children with handicap conditions under the mandates of Public Law 94-142 (Education of Handicapped Children), Section 121a.307 Physical Education, Sub-section (c.) Special Physical Education. Presently, this part of the law does not identify any standard that qualifies Special Physical Education. As a result, this term lacks substance and is subject to wide disparity of understanding and interpretation of which most inherently is the lack of awareness of the skills of a qualified practitioner in physical education.

The American Corrective Therapy Association supports the concept of adapted physical education as the appropriate profession to meet the physical and motor education needs of children with handicaps in the academic environment. Certified Corrective Therapists with the accompanying teaching credentials are highly qualified in the instruction and application of physical and motor skill development. The Certified Corrective Therapist is a physical education major from an accredited institution who has successfully passed a competency based examination in the assessed areas of therapeutic exercise, adapted games and sports, neurology, pathology, behavior and habilitation/rehabilitation techniques.

The Certified Corrective Therapist is capable of the following functions: 1) identifying pathologies in neuro-motor function, postural and orthopedic defects, perceptual/motor dysfunction, and deficiencies in movement and physical fitness. 2) Motor assessment. 3) Physical fitness testing. 4) Developing, implementing and evaluating program objectives. 5) Purchase and instruction in the use of special designed equipment. 6) Promote interpersonal and social skills through group function. 7) Provide liaison function with related services. 8) Provide inservice education to regular physical education program in order to promote the least restrictive alternatives. 9) Provide council and instruction to parents to enhance the effect of the services to the child.

Therefore, based on the intent of the rule and its obvious weakness combined with a solution that seeks to promote a standard to assure quality service and which does not seek to obviate present or future quality services, the American Corrective Therapy Association offers the following amendment for Corrective Therapy's inclusion as an available mandated service to promote the intent and compliance with P.L. 94-142 Section 121a.307 (c)

Section 121a.14 (b) (2) (ii)

> "Add" Corrective Therapy between adapted physical education and movement education.
>
> The amended section would therefore read, "The term includes special physical education, adapted physical education, corrective therapy, movement education, and motor development."

C. H. McCloy, State University of Iowa, once stated that corrective therapy was the offspring of the marriage of medical science and physical education and would grow only if carefully nurtured by both parents. Now, after 15 years of steady development, the profession has reached maturity. Here is the story of

CORRECTIVE THERAPY

HARRY B. DANDO, CCT

DURING THE PAST 40 years, physical education has contributed two specialties in the field of physical medicine and rehabilitation. First, physical therapy was an outgrowth of the early medical gymnasts who had long used heat, massage, and exercise. This great ancillary service was well organized during World War I and has advanced in scope and program since. Second, medical necessity during World War II brought forth a group of physical conditioning specialists, who assisted the medical staffs of Army hospitals in returning soldiers to duty. Out of this group of physical educators came the corrective therapy program.

Corrective therapy is defined as the application of medically prescribed therapeutic exercises and activities in the treatment of the mentally and physically ill patient, not only for treatment of the physical disability but for the improvement of the psychological and sociological aspects of disease and illness. Treatment of the whole individual is the watchword of the corrective therapists. No physical disability is limited to the portion of the body directly affected; it affects the entire body and personality as well.

Physical educators had long been interested in the problems of building muscle strength, improving coordination of body movements, improving endurance, and correcting poor body mechanics. Even before physical education, per se, came into the picture, the application of exercise to develop the body and even to alleviate pain and disability had a history dating back several centuries before Christ. The early physical educators were the medical gymnasts, the true fathers of the all physical medicine ancillary services.

Physical education, 40 or 50 years ago, was a program primarily concerned with the development of strong bodies and minds. But soon after 1920, more and more emphasis was placed on a program which attempted to incorporate modern educational theory into practice on the playing field and in the gymnasium. This period in the development of the adapted physical educator or corrective therapist has much significance, for the ability to teach others one's own discipline is as important as the knowledge of therapeutic measures. This very fact has established our profession. In the late thirties, several progressive physical educators and physicians such as McCloy, Klein, Clark, DeLorme, and Stafford, going along with the new evolution in medical thinking, began to turn back to the "physical" end of physical education.

The physical medicine areas of treatment of disease began to receive attention in medical schools throughout the country at the same time. During the past 20 years, there has been a startling evolution in medicine, accompanied by the development of many professions heretofore scarcely used or appreciated. The use of exercise and gross activities as an integral part of medical practice had been gradually developing, but only during World War II did it suddenly burst into flower.

During the war the critical lack of manpower due to poor physical development caused physical educators to concentrate their efforts on the restoration of programs specifically designed to actively condition the young and recondition the adult. They began attempting exercise programs for individuals with pathological conditions. Also during the war, physicians proved, beyond doubt, that rest as a therapeutic measure was not only undesirable but hazardous in many conditions, such as rheumatic fever, cardiac situations, tuberculosis, vascular accidents, many orthopedic disabilities, and even brain surgery.

Outgrowth of the War

Corrective therapy and the adapted physical education programs are actually the outgrowth of the needs of the armed forces to have fighting men in top physical and mental condition. Two men of vision, Dr. Howard Rusk and Major General Norman T. Kirk, the U. S. surgeon general, were largely responsible for physical reconditioning in the Armed Forces and for establishing corrective therapy as it is known today.

Inspired by the work of a British physical rehabilitation battalion in 1943, General Kirk inaugurated an extensive physical reconditioning program to return the American convalescent to duty more quickly. Physical reconditioning units were established in all Army hospitals. Schools for training reconditioning personnel were quickly started and by the end of 1946, over 8,000 persons had received extensive training.

Also early in the war, Dr. Howard Rusk, concerned with the undesir-

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Mr. Dando is at the Rehabilitation Center of the Fairview Hospital in Minneapolis, Minnesota. He presently serves the Association for Physical and Mental Rehabilitation as chairman of the Certification Committee.

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ate and harmful effects of bed rest, demonstrated the value of medically prescribed exercises rendered by physical educators on various patient types in shortening hospitalization, reducing hospital readmissions, and improving the morale of the patients. The progress made in this specialty during the war in counteracting deconditioning phenomena occurring in hospitalized soldiers of every classification was remarkable.

The physical reconditioning programs of the Army accomplished remarkable results. In 1946 the Veterans Administration incorporated the Army physical medicine and rehabilitation programs into their hospitals. They enlarged physical therapy departments, added occupational therapy clinics, and established corrective therapy along with other ancillary services to take care of the vast number of returning disabled servicemen. Former physical reconditioning personnel were now corrective therapists.

Teaching Methods Stressed

The initial personnel were hired by the Veterans Administration upon the recommendation of Dr. Howard Rusk. They were physical educators primarily concerned with the use of medically prescribed exercises to treat the hospitalized handicapped. There were 400 initially, well trained in civilian and army schools. Many needed to restudy anatomy, physiology, kinesi-ship outstanding authorities in the ology, and other basic sciences and to develop new techniques and suitable exercises for the different types of disabilities. They were determined to apply their teaching methods of physical education—to work *with* the patient and not *on* him in solving his physical or mental problem.

> *The corrective therapist and the adapted physical educator have much in common. Both are interested in the physical education procedures adapted to a physical or mental disability. Both are daily experiencing the joys of providing assistance to the disabled. Both use medically prescribed exercises and activities and are interested in the individual, not the disability. Many of the same disabilities that the corrective therapist treats in the hospital setting are seen by the adapted physical educator in the school setting.*

The corrective therapists were one of the key personnel responsible for excellent results—results so phenomenal that one must pause to ponder the reason for the lack of the medical and physical interest in these patients in the past or, at least, the lack of the "doing process" for their recovery. But because they were a relatively new member of the rehabilitation team, they were criticized severely by some of the older groups, so that from the very beginning they had to critically examine their very existence, their philosophy, and their scope of perspective.

Founding of the APMR

In October 1946, a group of corrective therapists attending a special course at Topeka, Kansas, organized the Association for Physical and Mental Rehabilitation. The chief aims were to promote the use of medically prescribed exercise therapy and adapted physical education, to advance the professional standards of education and training in the field of medically prescribed exercise therapy and adapted physical education, and to encourage and promote research in the field. This association has proved to be a progressive body which has advanced the professional development of both the corrective therapists and the adapted physical educator.

A medical advisory board of leading physicians and physical educators—Rusk, Covalt, Menninger, Greenwood, Davis, Clarke, Stafford, Rathbone, and others—was organized and worked hard to develop the professional status of the association. The official, bi-monthly publication of the Association for Physical and Mental Rehabilitation has published educational scientific information which has extended our influence even to other countries. The association sponsors an annual Scientific and Clinical Conference, bringing to the membership outstanding authorities in the field of rehabilitation. Yearly, six awards are made by the association to people making outstanding contributions to the field. The association sponsors scholarships for graduate training in the field of adapted physical education for individuals by its scholarship committee.

Standards and Certification

It is concerned also with the high standards of education and clinical training necessary to ensure the profession's sound growth. The corrective therapist cannot limit his training to that of a physical education major. A well-defined educational and clinical experience program has been developed over the years to assure that the student will graduate as a qualified therapist, capable of assuming his responsibilities in a hospital, clinic, or adapted program.

The undergraduate education program must now include courses in anatomy, physiology, kinesiology, applied and abnormal psychology, education, therapeutic exercises, physiology of exercise, analysis of movement, and many others specifically oriented to the needs of the therapists. To date, over 35 universities and colleges offer advanced study in corrective therapy and qualify in the educational curriculums. The clinical training of the prospective corrective therapist is best offered on a graduate level since the need to meet adequately the physical education major curriculum requirements consumes most of the available time on the undergraduate level. A thorough program of clinical training is necessary to give the student practical experience in clinical situations. Broad areas of hospital experience must be covered so that a minimum of 250 clinical hours is required with a suggested 375 hours as standard. Twenty-five hospitals and clinics are already participating in the clinical affiliation programs.[1]

In 1953, the American Board for Certification of Corrective Therapists was organized to pass on the qualifications of therapists and to establish a national register. Certification identifies qualified practitioners in the profession, and offers the public a means of protection and guarantee of competent service. Twenty certification examining teams have been formed throughout the country. Candidates for examination for certification must have completed an approved four-year curriculum leading to a bachelor's degree including courses in specific areas and have completed a minimum of 260 hours of clinical internship in medically-supervised physical education under the sponsorship of a recognized college or university. The examinations, which are given periodically in conveniently located centers throughout the country, consist of three parts: the written, practical, and interview.

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[1] The requirements of both the education and clinical training of a corrective therapist are presented in detail by Dr. Carl Haven Young and may be obtained in pamphlet form by writing to the Association for Physical and Mental Rehabilitation, 103 St. Lawrence Street, Rehoboth Beach, Delaware.

An Expanding Sphere of Work

The corrective therapist's sphere of work has expanded into many fields of medicine. It is available for all patients suffering from disease or injury such as cardiac patients, amputees, arthritics, and those with peripheral vascular diseases, brain injuries, spinal cord injuries, [illegible] mental disorders. It is a program which works closely with all of the ancillary services of physical medicine, and it is under the direct supervision and guidance of the patient's doctor. Most physical education techniques and exercise-activities are modified to treat the specific disabilities. Conditioning exercises are used to develop strength and neuromuscular coordination. Treatment includes exercises and resocialization activities for the psychiatric patients, functional ambulation and self-care training, therapeutic swimming, corrective and postural exercises, special activities for the newly blinded, training in the operation of wheelchairs and automobiles with paraplegics and quadriplegics, and adapted physical education in the schools.

In the field of orthopedics much has been accomplished through specific exercises designed to build up muscle strength and increase the range of motion of the affected extremity. Low back disabilities have received special emphasis in exercise to build stabilizing strength. Ambulation training for those with fractures is important.

ASSOCIATION FOR PHYSICAL AND MENTAL REHABILITATION

The APMR is a nationwide, incorporated, professional organization operated for educational and scientific purposes. Its objectives, as listed in the Association's constitution, are:

1. To promote the use of medically prescribed exercise therapy and adapted physical education.

2. To advance the professional standards of education and training in the field of medically prescribed exercise therapy and adapted physical education.

3. To promote and sponsor medically prescribed exercise therapy programs of the highest scientific and professional character.

4. To encourage research and publication of scientific articles dealing with medical rehabilitation.

5. To engage in and encourage those activities related to medically prescribed activity which might prove advantageous to medical rehabilitation and/or the Association.

The members of APMR recognize that no member of a medical team works alone, that cooperation and integration with other therapies are needed, and that education of the public and dissemination of scientific literature and techniques are best achieved through a national association.

Further information about the Association for Physical and Mental Rehabilitation may be obtained from its executive director, John Eisele Davis, APMR, 105 Saint Lawrence Street, Rehoboth Beach, Delaware.

In neurology, the paraplegic has been taught to increase the strength of his arms, to walk with crutches and braces, to care for his daily needs, to use his wheelchair, and even to drive a car. The quadriplegic has been given exercise designed to strengthen the specific muscles still functioning, to use various adaptations to dress and feed himself, to manipulate a wheelchair. The hemiplegic has been taught exercise to build up muscle strength of both affected and unaffected side, to care for his daily needs, to dress and feed himself, to walk. The Parkinson's disease patient has been taught extension exercises, muscle relaxation exercises, ambulation, and self-care. Polio, cerebral palsy, and multiple sclerotic patients have been helped by exercise and specific activities. In neuropsychiatry, corrective therapists have made much progress through activity-exercise programs in motivating all types of psychiatric disabilities from the simple psychotic to the most difficult catatonic patient. These activities are geared to the patient's level and ability, and provide for the channelization of socially unacceptable behavior, into acceptable expression of behavior. The activity motivation approach has been a driving force that has returned many a psychiatric patient to society.

With the amputee, corrective therapists have concentrated on a program of exercise to develop the involved extremity to the utmost and to teach the use of a prosthesis. Workers have trained single and double leg amputees to walk, climb stairs, and even enjoy social activities and games. They have been part of the blind rehabilitation programs of the Veterans Administration, and have been taught cane ambulation sports programs, and the use of seeing eye dogs.

Plan Boldly for the Future

Corrective therapy is definitely an area in which much research is needed; there is far too much that is not known that we need to know for the increasingly successful practice in the profession. Much is known about the field of physical education but relatively little is known as yet about the application of physical education to pathological processes. But since 1946, a great deal of research has been accomplished by adapted physical educators, physicians in other fields of medicine, and by the corrective therapist himself.

The growth and development of corrective therapy has been in response to the public interest for improved care, treatment, and rehabilitation of the sick and disabled. We have a responsibility to bring today's resources to the aid of today's disabled and to plan boldly for still greater feats tomorrow. ★

AMERICAN CORRECTIVE THERAPY ASSOCIATION, INC.

Application for Examination for Certification in Corrective Therapy, continued

INSTRUCTIONS

1. Be an active member or student member of the American Corrective Therapy Association, Inc.
2. Determine if you are eligible. The eligibility requirements are listed on the last page of this application form.
3. Complete this application. Mark "N/A" those items that are not applicable to you.
4. Secure the signature of the Clinical Training Instructor who supervised your Corrective Therapy Clinical Training on the last line of Section 10, or attach a signed photocopy of your Certificate of Clinical Training.
5. All pertinent college/university work must be documented by official transcript(s).
6. Submit the completed application, official transcript(s) and a non-refundable application fee to the Director of the Certification Board, A.C.T.A., for review.
7. Instructions on the payment of fees for application and for subsequent examination of eligible candidates are available on a separate notice and can be obtained by written request to the Director of the Certification Board, A.C.T.A.

EXAMINATION PROCEDURE

1. A statement of the applicant's eligibility to take the Certification Examination will be sent to the applicant and the closest area examiner.
2. The examinee will contact the area examiner of the A.C.T.A. to arrange a date, place and time for the examination that is mutually convenient to the examiner and the examinee.
3. The Certification Examination consists of a written and oral section. The examination will be administered periodically in nine (9) geographical areas of the continental United States. The examination is also administered at the Annual Conference of the A.C.T.A., held in July.
4. The examinee will contact the area examiner of the A.C.T.A. to arrange a date, place and time for the examination that is mutually convenient to the examiner and the examinee.
5. Examinees who fail either the written or oral portions of the Certification Examination may retake that portion upon payment of a reexamination fee. Request for reexamination and payment of the fee must be made to the Director, Certification Board, American Corrective Therapy Association, Inc.
6. Examinees who wish to file an appeal must do so within a period not exceeding ninety (90) days after receipt of the notice of failure. Such an appeal must be made to the Director, Certification Board, American Corrective Therapy Association, Inc.
7. The American Board for the Certification of Corrective Therapists reserves the right to make inquiry of any educational institution or reference mentioned on the application for verification of statements appearing herein.

RETURN THIS APPLICATION TO:

Director of the Certification Board, American
Corrective Therapy Association, Inc.

AMERICAN CORRECTIVE THERAPY ASSOCIATION, INC.

APPLICATION FOR EXAMINATION FOR CERTIFICATION IN CORRECTIVE THERAPY

1. Name Last First Middle Date of Birth Phone Number

2. Present address Street City State Zip Code

3. Permanent Home Address Street City State Zip Code

4. Present Position Title

5. Name and address of Employer Street City State Zip Code

6. Name of your Immediate Supervisor Title

7. Undergraduate Education Name of University Location Dates of Enrollment Major Field

8. Graduate Education Name of University Location Dates of Enrollment Major Field

9. Student Teaching Location of Experience Dates of Student Teaching Field Credits Received

10. Clinical Training in Corrective Therapy/Adapted Physical Education: Name and address of institution (above) Supervising Physician

Clinical Training Instructor Dates of Training Clock Hours of Training

The dates of training and the total number of clock hours spent in Clinical Training are correct for this applicant. The Applicant successfully completed 400 hours of Clinical Training under my supervision.

Signature of Clinical Training Supervisor Date

11. Please list below the courses that you have successfully completed to be eligible to take the Certification Examination by the ACTA. Requirements are listed on the back page of this form.) All entries below must be shown on your official transcript(s).

	Course Number	Department	Course Title	Grade Received	Semester Units	Quarter Credits
A.	**Applied Sciences:**					
B.	**Psychology:**					
C.	**Health and Physical Education**					
D.	**Corrective Therapy and Adapted Physical Education:**					

12. The statements made on this Application are true to the best of my knowledge.

Signature of Applicant ______________________ Date ____________

13. If the Certification Board of the American Corrective Therapy Association agrees that you are eligible to take the Certification Examination, would you prefer to take the examination at the Annual Conference (held in July) or would you prefer to make arrangements with the closest area examiner to take the Certification Examination? Please check one below.

Annual Conference in July ________ Closest Area Examiner ________

AMERICAN CORRECTIVE THERAPY ASSOCIATION, INC.

Requirements for Certification in Corrective Therapy

1. To be eligible for certification by the A.C.T.A., candidates shall have completed their training in a college or university accredited by the A.C.T.A.

2. The candidate shall be an Active or Student member of the American Corrective Therapy Association, Inc.

3. The candidate shall have a baccalaureate or advanced degree in Physical Education or Corrective Therapy.

4. The candidate shall provide evidence of successfully completing 400 hours of clinical training in Corrective Therapy from an A.C.T.A. approved training site.

5. The candidate shall show by their official transcript(s) that they have successfully completed the minimum number of credits in each category listed below, and all required courses in each category marked by an asterisk (*).

Didactic curriculum and academic categories, with asterisks indicating required courses.

APPLIED SCIENCES

* Anatomy	12 Semester Units or 18 Quarter Credits
* Kinesiology	
* Physiology	
* Physiology of Exercise	
Growth & Development	
Neuroanatomy	
* Neurology	
* Pathology	

PSYCHOLOGY

* General Psychology	6 Semester Units or 9 Quarter Credits
* Abnormal Psychology	
* Physiological Psychology	
Developmental Psychology	
Mental Health	
Psychotherapy	
Social Psychology	

HEALTH & PHYSICAL EDUCATION

* Analysis of Human Movement	16 Semester Units or 24 Quarter Credits
* Health Education and Problems	
* Principles of Health and Physical Education	
* Physical and Mental Habilitation	
* Tests and Measurements	
Evaluation of Health and Physical Education	
Research in Health and Physical Education	
* Skills and Applied Techniques	

CORRECTIVE THERAPY & ADAPTED PHYSICAL EDUCATION

* Physical Education for Atypical	8 Semester Units or 12 Quarter Credits
* Organizational and Administrational Corrective Therapy	
* Kinesiotherapy	
Recreation in Rehabilitation	
Intertherapy Relations	
Evaluation and Research Applied to	
* Corrective and Adapted Programs	

JRM 2-14-80

PREPARED STATEMENT OF EARL AND JO ANN BARBAN, JENNINGS, MO.

This year 9-1980, Robert Barban is receiving Resourse Room, alternating with Gym Class. Which meets 2 times a week, then the next week 3 times for 1 hr.

SCHOOL YEAR 1980-81

Everything for Robs program was dependent on the S.R.A. scores and the computor. We were not aware of the amount or kind of program or help time he was to receive until the 1st week of school. No notations where made in the IEP of his instructional services or time slot or materials or technics to be used.

Educational aids that would compensate in the regular classroom for his inability to read and compute have never been offered or made available to him.

His way through school has been a typical "pass on" syndrome, pass him on and see what the next teacher can do.

This year it's pass him on from building to building and see what the "buildings" can do!!!

We the parents of Robert M. Barban feel that our son has been discriminated against because of his handicap. He has been denied an opportunity to learn he has been denied exposure to learning equal in quality and quanity to his unlabled peers. In 1979-1980 for the first time he received one hour a day of special education, not including reading from Special School District. There was no attempt from the classroom to coordinate classroom instruction with what minimal efforts of special.

Our son Robert is dyslexic with multiple visual perceptual problems. Special school or his home district of Jennings have never offered him a compensatory education that would afford him an education for meaningful employment or higher education and thereby his intellectual potential.

LEGAL CENTER FOR HANDICAPPED CITIZENS
1060 Bannock Street, Suite 316 Denver, Colorado 80204
TTY only (303) 573-0949
(303) 573-0542

May 5, 1980

Congressman Paul Simon
Chairman, House Subcommittee on
Select Education
227 Cannon House Office Building
Washington, D.C. 20510

Dear Congressman Simon:

Pursuant to 42 U.S.C. §6012, the Legal Center has been designated by the Governor of Colorado as the State Protection and Advocacy System for developmentally disabled citizens. In addition to this designation, the Legal Center has operated in Colorado since 1976 as a public interest law firm specializing in the legal needs of handicapped citizens. Recently, the Education Advocates Coalition, of which the Legal Center is a member, issued a report expressing serious concern with national implementation of P.L. 94-142. Colorado was one of the 11 states targeted in the report, and we are all to well familiar with the fact that the legislative intent behind P.L. 94-142 is not being carried out. In Colorado, for example, we have recently filed a class action law suit in the United States District Court because of failure of this state to provide educational services for over 300 severely handicapped children who are institutionalized or otherwise placed outside of their family home.

While much of the problem is attributable to inadequate financing of the Act, lack of any vigorous and united efforts by the Bureau of Education for the Handicapped to enforce the Act is also a major reason for this situation. Personal experience of our organization with BEH has been terribly disappointing. In fact, had BEH properly performed its job, the recent suit which we filed would not have been necessary.

Failure of BEH to properly enforce the Act is, no doubt, due to a variety of reasons. Some of them appear to be lack of staff, lack of training, and lack of commitment to vigorously enforce the Act. As a result, hundreds of thousands of handicapped children are still be deprived of a free appropriate public education. I, therefore, call upon you to institute oversight hearings to investigate the failure of BEH to vigorously and adequately enforce the Act and to encourage it to take such remedial action as may be necessary to discharge its responsibilities.

I look forward to receiving from you your thoughts in this matter. The Legal Center extends to you our offer of assistance in any way possible.

Yours truly,

Bruce C. Bernstein
Attorney at Law

BCB:ds

cc: Senator Gary Hart
Senator Bill Armstrong
Representative Pat Schroeder
Representative Tim Wirth
Representative Ray Kogovsek
Representative James Johnson
Representative Ken Kramer
Ms. Jane Yohalem

The Honorable Carl D. Perkins
Sub Committee on Elementary
Secondary and Vocational Education
Room B346C
2181 Rayburn HOB
Washington, D.C.

Dear Mr. Perkins:

I am a parent of a six year old autistic child. We are residents of Fairfax County and live in Vienna, Virginia.

It has come to our attention that the education and residential facilities for autistic children are not adequate.

A study of Virginia facilities and education was conducted recently by the Grafton Residential School. The study is called the Grafton Autism Study & School for Contemporary Education.

Out of the 3910 Virginia agencies connected with autistic children that were contacted by mail for the study, only 285 found the time to report back to the school. Parents were also contacted and I can assure you that the return rate was high.

The Study showed that 47% of the autistic children in Virginia are between the ages of 6 and 12. There is not one college course given in the State of Virginia that teaches future teachers about autistic children or their special needs. In this state 83% of the autistic children are male and 84% are white. Autism can strike any family of any social or economic backround. There is no known cause for the handicapping condition, and there is every indication that many of these children are not retarded and can learn to overcome much of this handicap of autism.

Autism is thought to be a communication disability caused by a chemical imbalance in the message center of the brain. A CAT scan will not show any brain damage or tissue damage. An EEG will show no aberrant brain waives. And physically the children are perfect and quite attractive. Autism can be a handicap that is combined with other handicaps such as brain damage, or physical handicaps, but, in itself, it shows no signs as to its cause.

We do know, however, that with the correct training the children can learn to read and write and some have finished high school and have their college degrees. These cases are too few, and only with the special schooling is it even possible. Most of these children in the past twenty years have been classified as having childhood schizophrenia, received no schooling and now are in institutions, withdrawn into themselves with no hope of communication with other humans. The parents of these children were told that they had caused the problem and that it was an emotional handicap.

We have progressed far in twenty years in understanding the causes of autism, but the law hasn't. The state and federal law still classifies the autistic child as emotionally disturbed and has a student teacher ratio of 10 to 1. Not only is there no special program for the communication needs of these children; the student teacher ratio is much too high to allow the autistic child to learn. It is like putting a blind child in a seeing class and not giving him any help to compensate for the handicap.

We need Autism to be a separate category, not included under the blanket of Severely Emotionally Disturbed. We need this for the sake of the lives we are allowing to be lost to institutions and for the health of the state economy. A person who can work and contribute to society should be given every chance to realize that potential while there is still time.

For those children that have grown up without the benefit of special education, a residential facility is needed. Under the law a parent of an autistic adult is reponsible for him as if he were still a child. An autistic child never comes of age legally. A recent example of this is the Schieffelin family. Virginia has a facility called the Northern Virginia Training Center that is state owned. I understand that it is the only facility of its kind in the state. Mr. and Mrs. George B. Schieffelin after being accepted and filling out many forms placed their child in the facility for two weeks while they went to the funeral of Mr. Scheiffelin's mother. When they returned they found a bill of $69.00 a day for their child for the two weeks. During those weeks there was no medical service or costly care of any kind needed, just the normal serving of meals and a bed to sleep in. Mr. Michael C. Campfield, Reimbursement Supervisor, sent the bill for over $900.00. Mr. Scheiffelin states that the cost was never discussed with him, and the bill was a shock. The local chapter for Autistic Children is trying to start a residential facility where the autistic adults could work in gardens, raise crops, and make appropriate crafts. They know that they can run a facility for less than $69.00 a day per person. There is a crying need for residential facilities that parents can afford here in Virginia.

Mr. Scheiffelin, who lives at 9701 Ceraline Drive, Fairfax, Virginia 22032, and many other parents are very concerned for our children and their future. Please give our needs your consideration.

It is not easy to be a person in authority and there are many worthy causes and only limited time. We are ready and willing to actively help in any way possible. One of the hardest trials to face in this life is to lose a child. We watch our children withdraw into a living death each day. Please help us help them escape what the future seems to hold.

Thank you for your time in reading this letter. Anything you can suggest or do would be deeply appreciated.

Sincerely,

Janet L. Bilbo

Mrs. Charles Bilbo
2705 Livingstone Ln.
Apt. 201
Vienna, VA 22180

12 Hay Road
Brunswick, Georgia 31520
October 3, 1980

RECEIVED
OCT 15 1980
CONGRESSMAN GINN

The Honorable Bo Ginn
House of Representatives
Washington, D.C. 20025

Dear Mr. Ginn:

We are writing to you on behalf of our mentally retarded children and all handicapped children of Glynn County, Georgia.

We desperately need your help and advice.

As parents of severly handicapped children, we are concerned that, at the present time, Glynn County does not have a twelve month educational program for handicapped children.

From our experience, we know that a continuous program is necessary for their advancement and well being.

cannot emphasis Human Res.

Public Law 94-142 made us take our children out of a twelve month training program and put them in a nine month public school program. These children cannot take a three month break in their programs. Public

As parents, our hands are tied. We can only sit back and watch them regress because we lack the professional skills to help our children.

We are making plans now to try to raise enough money to hire a teacher for the Summer and obtain a building and supplies for the three month Summer break. This, of course, should not be necessary since the law states that educational programs will meet the individual needs of each student. The present nine month limit in programming does not meet the needs of hundreds of children throughout the State.

We would like to hear your views and advice on this matter. We will be awaiting your reply.

Sincerely yours,

Mr. and Mrs. Nathan English
Mr. & Mrs. Nathan English

Mr. and Mrs. Richard Bolin
Mr. & Mrs. Richard Bolin

Boudro's Adult Foster Home,
Brookfield, Wis., June 2, 1980.

Mr. Paul Simon,
Subcommittee—Select Education,
U.S. Congress, Washington, D.C.

Dear Mr. Simon: I do no know if my statement will be just a repetition of what you have already heard, but I feel I must state this.

The laws passed by Congress implementing education to handicapped children is a good law, an understandable law for parents, and in my opinion a workable law. It defines and programs for the education of our children. I thank you for passing them.

You have assigned the Office of Education, the Office for Civil Rights, the state's Department of Public Education to implement the laws and then moniter the educational services to our handicapped children. This is not being done. The failure is at all levels of our bureauctatic structure.

There is a procedure parents or organizations can follow to question the actions and appropriatness of the educational services, and try to correct them. It is not working very well. No one listens often—or really cares.

Investigations are instituted but it is more a paper search that a real evaluation of the problem. We are one of eight parents with ten children who requested a review of our local school system because we saw a widespread discrimination againist handicapped childred. We filed 26 charges against our school system.

Mr. Lawrence Washington, Director of the Elementary & Secondary Division, of the Chicago Office for Civil Rights sent me a letter after the completion of the "careful overview of the actions in order to be certain that the district is complying with Sect. 504" (Bureaucratic literature). The explanation to us was made in one paragraph. This is not acceptable to us. A paper review conducted in all 276 school districts was accepted as OK to the Chicago OCR office who investigated our 26 charges. See pg 11 in yellow booklet.

I assist other parents as a full-time unpaid parent-child advocate. I do this because another advocate helped me "force" my school system to provide an appropriate educational program for my son, and he is now first learning to spell in school. He has gained four years of written writing skills in six months with an appropriate phonic program taught to him. We finally got the phonic program started in 11th grade for him. He is now writing at 6th grade level. Just think at what level he would be writing—if—he had been taught phonics from first grade.

Those parents are encountering the same problems, the educational needs of the children are just ignored. The budget of the school dictates what is given to the child not the needs of the child.

If our government was really committed to teaching our handicapped children then state run schools should be examples of excellent educational programs. In Wisconsin, the institutions are in non-compliance of a court ordered supervision because of failure to provide services to handicapped children. The state plan made a commitment that the 94-142 funds would be first committed to that—at Wales, a state school for boys, the educational budget has been cut, not raised. Much more is said than really done.

Forty-one brave professionals of the Milwaukee school system sent a letter to the school board asking that special "B" classes be set up because there are many children in middle and junior high classes that canot read, write, spell, and even some that do not know their alphabet. They state that these children are not eligible for special education because their I.Q. is between 70 and 84. Learning Disability classes start with an I.Q. of 85, and Mentally Retarded classes start at 70. They are in between and there is nothing for them.

Wisconsin informed HEW 5/78 that they had an I.Q. requirement in the L.D. criteria. In 8/78 HEW informed the Wisconsin Department of Public Education that such a requirement is unacceptable with federal law. This was followed later by another bulletin on 1/80. This letter was written to the Milwaukee School Board on 5/80. Our DPI is certainly not following that directive. What concerns me more is a school system not questioning such a policy of excluding a whole group of children. . . . unless . . .administration did not want to expand their special education classes to accommodate more children.

I know many more violations that have occurred. That frightens me, as I am just a volunteer not working out of an office, not affiliated with an organization that has the money to advertise. I can believe the statements made by the Childrens Defense Fund and Better Government Associates. I hope you believe those statements!

The "intent" to implement; the "intent" to monitor the laws passed by Congress are lax. This is not just in educational requirements but ALL requirements. Sixty

Minutes just had a program on enforcement and monitoring problems with the regulatory agency supervising the building of atomic energy plants.

The question I would like answered is; are laws passed without concern for enforcement by our elected officials? If laws are not, then I need another question answered. How can laws be enforced? More important: How can you make your appointed representatives (the State and Federal Bureaucrats) really be responsible for implementing and monitoring the laws Congress passed?

I have become angry at the inaction and unaction (my word for people who use B.S. to say they've done something when they've done nothing). I am finding many people in high places of both the state and federal levels that have Ph. D.'s in this ability. Our society is beginning to "smell" because of this leadership decay.

I am in the hospital now so I cannot send you written documentation of local, state, and federal violations of the congressional laws. I will send you that documentation later. I have been assurred that the charges will be addressed AND answered.

I hope the Special Education Subcommittee will be the spark that could light the change in this one defect in our government and make it again, for the people.

Respectfully submitted.

SHARON BOUDRO.

P.S. I have just read that the Office of Education will have 500 fewer positions alloted to the department than when the office was HEW. I also read there are only 20 monitoring positions in the Office of Education. I hope the special education subcommittee will recommend more monitoring positions and have the Dept. report back with reports of the monitoring efforts made.

P.P.S.: Secretary Hufstedler formed a task force to look into the charges made by the Education Advocates Coalition. I hope that task force has parent representation.

Pg 1-66 are copies of letters concerning a request for a district review of our school district by 8 parents charging 26 incidents of discrimination. We requested a district review because we see this discrimination practiced against all handicapped children in our school district. The original request to the Chicago OCR office dated Oct. 17, 1977 is on Page 19.

Evidence of these actions can be shown by the not appropriate or not in place entirely boxes checked on the DPI due process form the Elmbrook school district filled out. The Wisconsin DPI did send the Elmbrook school district a new due process form of information that must be included on the "forms" the school system uses. See Pg 11 of 1980-81 Wisc State Plan for description of paper audit. Only 28 school systems were audited systematically pg 7 in Wis State plan Booklet.

This does not help the discriminations that have been outlined in our letter on Pg 19 aganist children already! These violations have not stopped just because this "paper audit" was done. During the final exam in an auto mechanics class 2 LD students were made to scrub the floor instead of given a mental final exam. How can this flagrant discrimination be stopped by a paper audit?

Our children are not respected by our school system . . .

1402 Everview Road
San Diego, Calif., 92110

September 25, 1980

Members of the Subcommittee on Select Education
Washington, D. C.

Honorable Sirs;

I have been a special education teacher with the San Diego, California School District for 9½ years.

About two years ago, the United States Government gave the San Diego School District over ten million dollars to create "Mainstream". In spite of all the smoke that is being blown around, "Mainstream", as it is, is a failure!

You have put all these funds at the disposal of unknowing administrators, who for the most part, have never spent a day in a special classroom.

What have they done with all this money locally? (1). Created many new departments and positions, (over 100). (2). Segregated Learning Handicapped Students. (I now teach 9th grade learning handicapped students at Horace Mann Jr. High. Not one of my students is from the Horace Mann district, but bussed from surrounding areas. In fact all the 9th grade learning handicapped students in San Diego are bussed to Mann. 7th graders are bussed to Montgomery Jr. High. 8th graders are bussed to Hale Jr. High, and so on.

What these students need is stability. The whole idea of the original "Learning Assistance Classes, Type I (those are students with normal intelligence, behind academically, and with behavior problems) was to try and keep them in school, and in comfortable, familiar surroundings, with neighborhood friends and peers. The teacher then really mainstreamed his students into basic classes on his local campus with teachers he personally knew and felt, would work with them. The Special Ed teacher would only put his students into classes that he knew they could handle. It worked great! Ask any teacher at Madison High School prior to 1978.

What our Director of Special Education (Daniel Lochtefeld) is doing, is clustering,or better,segregating special ed students at different school sites. Some of these kids have to get up at 5 AM for a hour ride to some unfamiliar surroundings. As one of my students put it. "you make a new friend only to find she or he lives all the way across town."

Another very serious problem that is developing is that they are searching desperately to find and label students "L.H." to fill classes for personnel they have hired.

I would conservatively estimate that at least 15% of the students I have,should not be in special classes. Somehow someone has convinced their parents that their child should be in a special class.

This segregating and then "lumping all specials" into one school is also damaging the students self image. A boy or girl with normal intelligence is being placed with metally retarded children.

The rest of the children on our school site (non-L.H.) feel that all the children in the 400 and 600 buildings are freaks.

The children themselves have no "normal" peer groups to keep them in line. They just bunch up together and reinforce each others negative behavior.

Please take the time to examine the program, and send someone to see first hand what is really going on in "Mainstream".

Most Sincerely Yours,

Frederick F. Bowles

Frederick F. Bowles

Protection and Advocacy Project

GOVERNOR'S COUNCIL ON HUMAN RESOURCES
ARTHUR A. LINK,
GOVERNOR

State Capitol - 13th Floor
Bismarck, North Dakota 58505
701-224-2972
1-800-472-2670

BARBARA C. BRAUN
DIRECTOR

April 24, 1980

Congressman Paul Simon
Chairman, House Subcommittee
on Select Education
227 Cannon House Office Building
Washington, DC 20510

Dear Congressman Simon:

I would like to bring to your attention a report by the Education Advocates Coalition on federal compliance activities to implement the Education for All Handicapped Children Act (P.L. 94-142), which I am assuming you are familiar with at this time. The noncompliance issues cited in this report appear to be prevalent nation-wide.

Here in North Dakota, approximately 25% of the school-age residents in a state institution for the mentally retarded are receiving no educational services whatsoever. Approximately 59% of the school-age children in this same institution are receiving minimal educational services (half-days or less). Many of the children in this institution are in a placement which is inappropriate to their needs and could be better served if programs were available in local communities.

Many parents in the state have been denied the parity called for in P.L. 94-142 through the individualized educational planning process. Children are frequently sent 300 miles from home for educational services which often violates the law providing for placement in the least restrictive alternative. The parents of these same children are struggling to get related services such as costs for transportation - it seems that many educational agencies view these services as a gift rather than a requirement under the law.

I could cite you many other examples of noncompliance with P.L. 94-142 in North Dakota, but I think the examples above illustrate my point adequately.

In view of these problems, I am requesting that the House Subcommittee on Select Education exercise its oversight power to insure that the Department of Education take immediate action in responding to the need for adequate implementation of P.L. 94-142.

Your assistance in this crucial matter is greatly appreciated. If you have questions or comments, kindly advise.

Sincerely,

Barbara C. Braun

Barbara C. Braun
Director

BCB/mt

cc: Education Advocates Coalition
Judge Shirley M. Hofstedler, Secretary, DOE

BRONX, N.Y., *August 12, 1980.*

Congressman PAUL SIMON,
U.S. House of Representatives,
Washington D.C.

DEAR CONGRESSMAN PAUL SIMON: I hereby submit my response to the two questions asked:

1. Where would I like our learning center for orthopedically handicapped children to be in ten years?

I would like to see installed in our building an actively utilized elevator. It should be large enough to ride four average sized wheelchairs.

2. What would an elevator cost?

A representative of the Otis elevator company came to our school to provide us with an estimate of the cost of constructing an elevator. The estimate was for a two wheelchair elevator to begin on street level (where we hold our classes) to the fourth floor. The cost of constructing this elevator would be approximately $150,000 complete. We were informed that the elevator would take twenty-six weeks to construct from the time the contract was signed.

It would be wonderful if we were provided with the reinstatement of ancillary services for our children. We would greatly benefit from a psychologist, social worker and an adaptive physical education program.

I would like a more efficient teacher evaluation form for a child's progress. As elaborated in my presentation, I feel that the I.E.P.'s as they are presently are ineffective, onerous, and a waste of time.

In closing, it was a great privilege to speak before Congress, and I hope my information will be helpful for the children of our unit.

Respectfully,

GAIL CARTENUTO.

BRONX, N.Y., *August 12, 1980.*

DEAR CONGRESSMAN SIMON: I apologize for the delay in responding to your questions but shortly after I spoke before the Congressional Hearing (May 9, 1980 at 26 Federal Plaza, New York Select Committee on Special Education, we at P.S. 85 Bronx, received notification from Dr. Jerry Gross, Director of Special Education, New York City, that we were to close our unit and our children were to be scattered between Coop City and P.S. 95, because we did not have an elevator. We were all heartsick at P.S. 85 as P.S. 95 had no therapy and no suitable program for our children. Coop City was 1½ hour each way for the children and was rapidly becoming an institution with our 50% handicapped population including multihandicapped, emotionally handicapped etc. This was not exactly what the law spelled out for our physically handicapped. Many of whom are gifted children. The parents have strenously protested at meetings with special ed representatives and have received support of legislators, local school board, community members etc. Even at this late date in August children have been left without transportation to 85x for September.

Since the elevator is the issue Dr. Gross's Office is using to abolish our program. I would appreciate any particulars in filing for a grant for such.

Respectfully,

GAIL CARTENUTO.

CHACKES AND HOARE
ATTORNEYS AT LAW

KENNETH M. CHACKES
MICHAEL J. HOARE
LEE T. LAWLESS

314 NORTH BROADWAY
ST. LOUIS, MO. 63102
(314) 241-7961

September 22, 1980

House Subcommittee on Select Education
Paul Simon, Chairman
Kansas City, Missouri

Dear Committee Members:

I appreciate the opportunity to submit this letter in lieu of live testimony before this Committee in order to advise the Committee of what I believe is an important issue concerning the implementation of and the compliance with the Education for All Handicapped Children Act, Public Law 94-142, in the State of Missouri.

The issue which is addressed herein involves the failure of the State of Missouri and providers of public education for handicapped children in Missouri to consider and act upon the needs of many handicapped children for an extended school year, in excess of the traditional nine-month year. I believe, based upon information received from clients of this firm and other persons with whom I have consulted, that the State of Missouri has a uniform policy that it will not provide and that it will neither encourage nor require other public agencies which provide special education any programming beyond the typical nine-month school year.

It appears that this policy has been maintained despite the clear obligation under Public Law 94-142 to design and implement a program of special education and related services which is individually tailored to meet the unique needs of each handicapped child. This policy is maintained despite the clear indication to the State of Missouri from the United States Department of Education that a uniform policy limiting special education to 180 days per year is inconsistent with Public Law 94-142. This policy is maintained despite the holding of the Third Circuit Court of Appeals in Battle v. Pennsylvania, ___ F.2d ___ (3rd Cir. 1980), affirming Armstrong v. Kline, 476 F. Supp. 583 (E.D.Pa. 1979).

It is possible, and I am hopeful, that these recent events (the Battle decision, and the conveyance to the State of Missouri of the position taken by the Department of Education) have caused the State to re-examine and abandon its policy, but no indication of change has been given in connection with litigation against the State on this issue and no change is evident within the Special School District of St. Louis County, also a defendant in said litigation.

The litigation referred to immediately above is a class action on behalf of all handicapped children in the State of Missouri who require or may require or benefit from a program of special education in excess of the traditional nine-month school year. The named plaintiffs, representing the class, are a handicapped child and his parents who reside in St. Louis County, Missouri, a handicapped child and his parents who reside in Jackson County, Missouri, and Missouri Developmental Disabilities Protection and Advocacy Services, Inc., the state agency charged with the responsibility of advocating for the rights of developmentally disabled persons in the State of Missouri pursuant to the Developmental Disabilities Act, 42 U.S.C. §§6001 _et seq_.

Named as defendants in that lawsuit are the Special School District of St. Louis County; Arthur L. Mallory, Commissioner of Education of the State of Missouri; Leonard W. Hall, Assistant Commissioner for the Division of Special Education of the Missouri Department of Elementary and Secondary Education; the Missouri Department of Elementary and Secondary Education; and the Missouri State Board of Education.

For your information, I am attaching to this letter a copy of the Amended Complaint in that lawsuit and I will briefly describe below the proceedings which led to filing it.

In the spring of 1979, Michael Yaris was evaluated by the Special School District of St. Louis County. Michael Yaris, now age nine, is an autistic-like child, with a severe language delay and serious behavior problems. Following his evaluation, the Special School District of St. Louis County held a meeting to develop an individualized education program (IEP) for Michael Yaris. At that meeting Michael's parents, Robert and Mary Yaris, requested that continuous programming, with no break longer than one month, be provided by the District. We were told by the Special School District members of the IEP Conference Committee that they could not include summer programming on an IEP and that there was no proof in the literature of the need for continuous programming. It made absolutely no difference to the Special School District members of the IEP Conference Committee that it was the opinion of Michael's parents, the teachers and administrators from the private school for autistic children which Michael had been attending and Michael's psychologist, that Michael needed an educational program with no extended summer break. The Special School District personnel were unwilling to consider Michael's individual need.

In due course, the Yarises appealed the IEP and a hearing was conducted by a higher level official of the Special School District. The Yarises were told at that hearing that the Special School District could only consider providing an extended school year if the Yarises could "prove" Michael's need for such programming. The Yarises and the teachers and administrators from Michael's private school described and presented evidence showing substantial regression accompanying a two-month break in programming and an extremely long period required at the end of that break for Michael to regain lost skills and to recover from the recurrence of inappropriate behaviors which interferred with his educational progress.

The Special School District responded that the Yarises failed to prove that Michael's regression and long recoupment period were caused "solely by the extended break.

Thereafter, the Yarises requested a due process hearing which was later conducted by a panel consisting of three persons. That panel found that a two-month break was accompanied by significant regression, but failed to conclude, one member dissenting, that summer programming was necessary for Michael.

With all due respect to the majority members of that hearing panel, I cannot help but believe that the fact that the Special School District has absolutely no summer programming for any handicapped children greatly influenced their decision. Counsel for the Special School District, in his closing argument to that panel, referred to the high cost of redesigning the entire school system.

Following the adverse decision by the panel, the Yarises appealed to the Missouri State Board of Education. Dr. Leonard W. Hall was designated by the Board to act as hearing officer and, as such, upheld the majority decision of the hearing panel.

The Yarises followed the legally prescribed course and appealed to the United States District Court for relief.

Because of the uniform failure to provide summer programming by the Special School District of St. Louis County and the State of Missouri, the litigation was filed as a class action on behalf of all handicapped children adversely affected by the policies of the State and the District.

Since the lawsuit was filed, additional individual plaintiffs from Independence, Jackson County, Missouri, and the Missouri Disabilities Protection and Advocacy Services, Inc. joined as plaintiffs and representatives of the class.

The State defendants and the Special School District are vigorously defending that lawsuit. That defense continues despite the recent decision in Battle v. Pennsylvania and recent correspondence from the United States Department of Education informing the State of Missouri that a uniform policy limiting the length of the school year for handicapped children is inconsistent with Public Law 94-142.

As the current 1980-1981 school year was about to commence, a new IEP Conference Committee was convened by the Special School District of St. Louis County for Michael Yaris. At a meeting of that Committee in August 1980, the Yarises again asked for summer programming for Michael. They were told by the chairman of the Conference Committee, a representative of the Special School District of St. Louis County, that he had no authority to include a summer program on an IEP and that he could not legally do so.

In conclusion, on behalf of my clients and numerous other handicapped children in the State of Missouri, I urge your Committee to take whatever action is appropriate in order to bring the State of Missouri and all providers of public education into compliance with Public Law 94-142 by individually considering the unique needs of each handicapped child for an extended school year.

If this Committee desires any further information regarding the matters contained in this letter, please feel free to contact the undersigned at your convenience.

Again, thank you for the opportunity to present this information to you.

Respectfully,

Kenneth M. Chackes

KMC:rer

Enclosure

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

ROBERT and MARY YARIS,
on their own behalf and
as next friends of
MICHAEL YARIS, and
STEPHEN and MARILYN STUBBS,
on their own behalf and
as next friends of
ADAM STUBBS, and
MISSOURI DEVELOPMENTAL
DISABILITIES PROTECTION AND
ADVOCACY SERVICES, INC.,
on behalf of all those
similarly situated,

Plaintiffs,

v.) Civil Action No. 80 4075 CV-C-W

SPECIAL SCHOOL DISTRICT
OF ST. LOUIS COUNTY,

ARTHUR L. MALLORY,

LEONARD W. HALL,

DEPARTMENT OF ELEMENTARY AND
SECONDARY EDUCATION, and

STATE BOARD OF EDUCATION,

Defendants.

AMENDED COMPLAINT

COUNT I

I. Preliminary Statement

1. Count I is an individual action brought by Robert and Mary Yaris, on their own behalf and on behalf of their minor child, Michael Yaris, for declaratory, injunctive and monetary relief on the basis that defendant Special School District of St. Louis County has failed to provide and/or fund a free appropriate education for Michael Yaris and has failed to provide him with his guaranteed procedural safeguards in that (1) it has failed and refused to implement in a timely and meaningful manner any educational program for Michael Yaris and to reimburse Robert and Mary Yaris for the costs expended by them for an appropriate education, and (2) it has failed and refused to pay the costs incurred by Robert and Mary Yaris during due process proceedings. These actions, failures and refusals are in violation of federal and state law.

II. Jurisdiction

2. Jurisdiction in this Court is invoked pursuant to 20 U.S.C. §1415(e)(2) and (4); pursuant to 28 U.S.C. §1331, in that the amount in controversy exclusive of interest and costs exceeds the value of $10,000.00 and this action arises under the laws of the United States; pursuant to 28 U.S.C. §1343, in that this is an action brought pursuant to 29 U.S.C. §794 and 42 U.S.C. §1983. Declaratory relief is sought pursuant to 28 U.S.C. §§2201 and 2202. State law claims are within the pendant jurisdiction of this Court.

III. Parties

3. Michael Yaris, aged nine, is a mentally handicapped child who brings this suit by his parents and next friends, Robert and Mary Yaris. Michael Yaris and Robert and Mary Yaris reside together in University City, St. Louis County, Missouri.

4. Defendant Special School District of St. Louis County is a body corporate and political subdivision of the State of Missouri and may be sued in its own name. Said defendant, among other things, operates schools for the education of handicapped children throughout St. Louis County, Missouri. Said defendant is a recipient of federal financial assistance, including assistance under the Education for All Handicapped Children Act of 1975, 20 U.S.C. §§1401 et seq. (hereinafter referred to as P.L. 94-142).

IV. Statement of Claim

5. Michael Yaris was evaluated by the Special School District of St. Louis County on or about January 24, 1979 and a diagnostic staffing was conducted by said defendant on or about February 2, 1979.

6. Individualized Education Program (hereinafter referred to as IEP) conferences were conducted by the Special School District of St. Louis County for Michael Yaris on or about March 15, 1979 and May 31, 1979.

7. By letter dated May 29, 1979 Robert and Mary Yaris requested of the Special School District of St. Louis County a hearing to appeal Michael's evaluation and IEP.

8. On or about July 18, 1979 the Special School District of St. Louis County conducted an informal conference as the first step in the appeal process.

9. By letter dated August 9, 1979 Robert and Mary Yaris requested of the Special School District of St. Louis County a due process hearing to appeal Michael's evaluation and IEP.

10. On January 22, 1980 Robert and Mary Yaris and the Special School District of St. Louis County agreed upon all of the components of an IEP for Michael Yaris except for the issue of year-round or continuous programming.

11. On or about January 29 and 30, 1980 a due process hearing was conducted by a three-member panel. The panel decision and a dissenting opinion were rendered on or about February 14, 1980.

12. By letter dated February 15, 1980 Robert and Mary Yaris requested review by the State Board of Education of the panel level hearing decision.

13. By letter dated March 7, 1980 Robert and Mary Yaris requested of the Special School District of St. Louis County that it pay the costs of a copy of the transcript of the hearing and a copy of the complete record of the hearing for review by the State Board of Education. The Special School District of St. Louis County refused to accept responsibility for said costs.

14. On March 31, 1980 Robert and Mary Yaris sent to Dr. Leonard W. Hall, hearing officer designated by the State Board of Education, a copy of the record of the panel hearing which they obtained at their own expense.

15. Robert and Mary Yaris and Michael Yaris have exhausted their administrative remedies under P.L. 94-142.

16. By letter dated October 31, 1979 Robert and Mary Yaris lodged a complaint against the Special school District of St. Louis County with the Department of Health, Education and Welfare wherein they alleged, inter alia, that said defendant has failed to provide any educational program for Michael Yaris in violation of §504 of the Rehabilitation Act of 1973, 29 U.S.C. §794.

17. On April 30, 1980 the Department of Health, Education and Welfare determined that no violation of the Rehabilitation Act of 1973 was shown.

18. Robert and Mary Yaris have exhausted their administrative remedies under the Rehabilitation Act of 1973.

19. Defendant Special School District of St. Louis County has denied Michael Yaris a free appropriate public education in that it failed to implement any educational program until only six weeks remained in the 1979-80 school year, at which time implementation would have been inappropriate, and has failed and refused to fund any educational program for Michael Yaris. Said denial is in violation of P.L. 94-142, the Rehabilitation Act of 1973, 42 U.S.C. §1983 and Missouri state law.

20. The Special School District of St. Louis County has denied Michael Yaris his guaranteed procedural safeguards in that it has failed and refused to pay the costs incurred by Robert and Mary Yaris for a copy of the transcript and a copy of the record for Dr. Hall. Said denial is in violation of P.L. 94-142, 42 U.S.C. §1983, and Missouri state law.

WHEREFORE, for Count I of their Amended complaint, plaintiffs Robert and Mary Yaris and Michael Yaris pray for the following relief:

1. A declaratory judgment that defendant Special School District of St. Louis County is acting and has acted unlawfully as herein alleged;

2. An order requiring defendant Special school District of St. Louis County to reimburse Robert and Mary Yaris for the reasonable and necessary costs incurred by them in providing an appropriate education for Michael Yaris and for the costs incurred by them during the due process proceedings;

3. Such other injunctive and other relief as may be required to prohibit said defendant from engaging in the future in the unlawful conduct alleged herein;

4. An order requiring the payment of reasonable attorneys' fees and the costs and expenses incurred in connection with this action.

COUNT II

I. Preliminary Statement

21. This is an action for declaratory and injunctive relief for the named plaintiffs individually and for a class of similarly situated plaintiffs on the basis that defendants are failing and refusing to provide or make available a free appropriate education for, and are discriminating against, the named minor plaintiffs and other handicapped children in the State of Missouri who require

or may require or benefit from an educational program in excess of the traditional nine-month school year and with no extended break in programming. These actions, failures and refusals are in violation of federal and state statutory and constitutional law.

II. Jurisdiction

22. Jurisdiction in this Court is invoked pursuant to 20 U.S.C. §1415(e)(2) and (4); pursuant to 28 U.S.C. §1331, in that the amount in controversy exclusive of interest and costs exceeds the value of $10,000.00 and this action arises under the Constitution and laws of the United States; pursuant to 28 U.S.C. §1343, in that this is an action brought pursuant to 29 U.S.C. §794 and 42 U.S.C. §1983. Declaratory relief is sought pursuant to 28 U.S.C. §§2201 and 2202. State law claims are within the pendant jurisdiction of this Court.

23. Plaintiffs have no adequate remedy at law and have suffered, and unless the defendants are restrained, will continue to suffer immediate and irreparable harm.

III. Parties

24. Michael Yaris, aged nine, is a mentally handicapped child who brings this suit by his parents and next friends, Robert and Mary Yaris. Michael Yaris and Robert and Mary Yaris reside together in University City, St. Louis County, Missouri.

25. Adam Stubbs, aged five, is a mentally handicapped child who brings this suit by his parents and next friends, Stephen and Marilyn Stubbs. Adam Stubbs and Stephen and Marilyn Stubbs reside together in Independence, Jackson County, Missouri

26. Missouri Developmental Disabilities Protection and Advocacy Services, Inc. (hereinafter "Missouri P & A") is now, and was at all times relevant hereto, a not-for-profit corporation having its principal place of business at 211 B Metro Drive, Jefferson City, Missouri. It is duly organized and existing under and by virtue of the laws of the State of Missouri. Pursuant to the Developmental Disabilities Act, 42 U.S.C. §6001, _et seq._, Missouri P & A is the state agency charged with the responsibility of advocating for the rights, including educational rights, of persons in the State of Missouri

who are developmentally disabled. Missouri P & A seeks to protect and enforce the legal and human rights of persons with developmental disabilities in order to increase life opportunities and ensure appropriate benefits under the law. Funding for Missouri P & A is provided by the Developmental Disabilities Office of the United States Department of Health, Education and Welfare. The interests of Missouri P & A and persons with developmental disabilities, whose rights the Missouri P & A is charged with protecting, are adversely affected by the actions of the defendants as alleged herein.

27. Defendant Special School District of St. Louis County is a body corporate and political subdivision of the State of Missouri and may be sued in its own name. Said defendant, among other things, operates schools for the education of handicapped children throughout St. Louis County, Missouri. Said defendant is a recipient of federal financial assistance, including assistance under the Education for All Handicapped Children Act of 1975, 20 U.S.C. §§1401 _et seq._ (hereinafter referred to as P.L. 94-142).

28. Defendant Arthur L. Mallory is sued in his individual and official capacity as the Commissioner of the Department of Elementary and Secondary Education. He is responsible under P.L. 94-142 for insuring that all handicapped children in Missouri receive a free and appropriate public education. As part of that responsibility defendant Mallory supervises all local school districts and other state agencies in their provision of a free and appropriate public education to Missouri handicapped children. Defendant Mallory is also responsible for establishing procedural safeguards to assure that such an education is provided. His duties further include supervision over the distribution of state and federal funds to local school districts for use in the education of handicapped children. Defendant Mallory is also responsible under Missouri law for insuring that all handicapped children within the State of Missouri are provided special educational services sufficient to meet their needs and maximize their capabilities.

29. Defendant Leonard W. Hall is sued in his individual and official capacity as the Assistant Commissioner for the Division of Special Education of the Department of Elementary and

Secondary Education. Among his duties and responsibilities defendant Hall is charged with administering the Division of Special Education in a manner that insures that all handicapped children in the State of Missouri receive an appropriate education as mandated by state and federal law.

30. Defendant Department of Elementary and Secondary Education is a department of the executive branch of the Missouri state government created by the Omnibus State Reorganization Act of 1974. The Department is headed by the State Board of Education and is responsible for carrying out its educational policies, including the policies related to the provision of special education services to all handicapped children in the State of Missouri. The Department of Elementary and Secondary Education is a recipient of federal financial assistance, including assistance under P.L. 94-142.

31. Defendant State Board of Education is created by the Missouri Constitution, Article 9, Section 2(a). The State Board of Education is required to carry out all the educational policies of the State of Missouri relating to public schools and to adopt standards and regulations governing the provision of educational services to each handicapped child in the state.

IV. Class Action Allegations

32. The named plaintiffs bring this action on behalf of themselves and all those similarly situated pursuant to Rules 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure, on the grounds that the defendants have acted and refused to act on grounds generally applicable to the named and class plaintiffs, making appropriate injunctive and declaratory relief as to the class as a whole.

33. The class represented by the named plaintiffs is composed of all handicapped school-aged persons in the State of Missouri who require or may require or benefit from an educational program in excess of the traditional nine-month school year and with no extended break in programming, and the parents or guardians of such persons.

34. The class is so numerous that joinder of all members is impossible. Although the exact size of the class is unknown, there are many thousands of handicapped school-aged persons in Missouri, many of whom require or may require or benefit from an

educational program in excess of the traditional nine-month school year and with no extended break in programming.

35. There are questions of law and fact in common between the named plaintiffs and the members of the class they seek to represent:

a. The named plaintiffs include handicapped school-aged persons, residents of the State of Missouri, who require an educational program in excess of the traditional nine-month school year and with no extended break in programming, and their parents. The named plaintiffs seek to represent a class composed of other handicapped school-aged persons in the State of Missouri who also require or may require or benefit from an educational program in excess of the traditional nine-month school year and with no extended break in programming, and the parents or guardians of such persons.

b. The named minor plaintiffs and the minor members of the class may not lawfully be discriminated against because of their handicapping conditions and are entitled to a free appropriate program of special education and related services, including, in their cases, an educational program in excess of the traditional nine-month school year and with no extended break in programming, to be provided by the defendants under various federal and state statutes and regulations including P.L. 94-142, §504 of the Rehabilitation Act of 1973, 29 U.S.C. §794, and under the equal protection clause of the Fourteenth Amendment to the United States Constitution.

c. The named plaintiffs and the members of the class they seek to represent have been and continue to be denied their rights as set forth above because of the policies of defendants which deny them the right to receive an educational program in excess of the traditional nine-month school year and with no extended break in programming.

36. The claims of the named plaintiffs pursuant to federal and state law and the United States Constitution are typical of the claims of the class they seek to represent, and the named plaintiffs have no interests which are in conflict with or inimical to those of the members of the class.

37. The named plaintiffs will adequately represent and protect the interests of the class they seek to represent in that the named plaintiffs have interests in common with, and not in conflict with, the interests of the members of the class; moreover, counsel for the plaintiffs are experienced in federal litigation and will vigorously pursue this action in the interests of the named and class plaintiffs.

V. Statement of Claim

38. Michael Yaris is a nine-year-old mentally handicapped autistic-like child with a severe language learning problem accompanied by behavior disorder. He requires a consistent program in a structured environment where behavior control methods must be utilized.

a. Michael Yaris requires an educational program in excess of the traditional nine-month school year and an educational program with no extended break in order to prevent substantial regression and loss of skills, and will otherwise benefit from such a program.

b. Michael Yaris was evaluated by the Special School District of St. Louis County on or about January 24, 1979 and a diagnostic staffing was conducted by said defendant on or about February 2, 1979.

c. Individualized Education Program (hereinafter referred to as IEP) conferences were conducted by the Special School District of St. Louis County for Michael Yaris on or about March 15, 1979 and May 31, 1979.

d. By letter dated May 29, 1979 Robert and Mary Yaris requested of the Special School District of St. Louis County a hearing to appeal Michael's evaluation and IEP.

e. On or about July 18, 1979 the Special School District of St. Louis County conducted an informal conference as the first step in the appeal process. On August 1, 1979 the Special School District of St. Louis County rendered its decision refusing to provide year-round or continuous programming for Michael Yaris.

f. By letter dated August 9, 1979 Robert and Mary Yaris requested of the Special School District of St. Louis County a due process hearing to appeal Michael's evaluation and IEP.

g. On or about January 29 and 30, 1980 a due process hearing was conducted by a three-member panel. The panel decision and a dissenting opinion were rendered on or about February 14, 1980. The majority decision was that there were not sufficient facts found to support the need for summer programming in order to make the IEP an appropriate educational program for Michael Yaris.

h. By letter dated February 15, 1980 Robert and Mary Yaris requested review by the State Board of Education of the panel level hearing decision.

i. On or about April 10, 1980, Dr. Leonard W. Hall, hearing officer designated by the State Board of Education, affirmed the majority decision of the three-member panel.

j. Robert and Mary Yaris and Michael Yaris have exhausted their administrative remedies under P.L. 94-142.

k. By letter dated October 31, 1979 Robert and Mary Yaris lodged a complaint against the Special School District of St. Louis County with the Department of Health, Education and Welfare wherein they alleged, inter alia, that said defendant has failed to provide Michael Yaris with an appropriate educational program by denying him a year-round continuous program in violation of §504 of the Rehabilitation Act of 1973, 29 U.S.C. §794.

l. On April 30, 1980 the Department of Health, Education and Welfare determined that no violation of the Rehabilitation Act of 1973 was shown in that the due process panel hearing satisfied the procedural requirements of said Act.

m. Robert and Mary Yaris have exhausted their administrative remedies under the Rehabilitation Act of 1973.

39. Adam Stubbs is a five-year-old mentally handicapped autistic-like child with a severe language-learning problem accompanied by behavior disorder. He requires a consistent program in a structured environment where behavior control methods must be utilized.

a. Adam Stubbs requires an educational program in excess of the traditional nine-month school year and an educational program with no extended break in order to prevent substantial regression and loss of skills, and will otherwise benefit from such a program.

b. Adam Stubbs was evaluated by the Fort Osage School District, Independence, Missouri.

c. The Fort Osage School District, Independence, Missouri referred Adam Stubbs to the defendant Department of Elementary and Secondary Education.

d. The defendant Department of Elementary and Secondary Education has contracted with the Sherwood Center for the Exceptional Child, Inc., Kansas City, Missouri, to provide Adam Stubbs with a special educational program.

e. The defendant Department of Elementary and Secondary Education has failed to provide or make available to Adam Stubbs an educational program in excess of the traditional nine-month school year with no extended break.

40. Defendant Special School District of St. Louis County provides educational programs for handicapped children only on a traditional nine-month school year with a summer break of over two months.

41. Defendants Mallory, Hall, Department of Elementary and Secondary Education, and State Board of Education provide educational programs for handicapped children only on a traditional nine-month school year with a summer break of over two months.

42. Defendants Mallory, Department of Elementary and Secondary Education, and State Board of Education provide and/or fund educational programs for non-handicapped children which are available in the summer months and are in addition to the traditional nine-month school.

43. Defendants Mallory, Hall, Department of Elementary and Secondary Education and State Board of Education have failed and continue to fail to require that other providers of public educational programs for handicapped children in the State of Missouri provide or make available educational programs in excess of the traditional nine-month school year and with no extended break in programming on a nondiscriminatory basis and where such programs are required or beneficial for handicapped children.

44. It is the policy and practice of all defendants that the traditional nine-month school year will not be modified or extended for any handicapped child or children unless and until defendants are specifically required to do so by appropriate judicial or legislative action.

45. Defendants have denied the named minor plaintiffs and the minor members of the class a free appropriate public education in that defendants have failed and refused to provide them with an educational program in excess of the traditional nine-month school year and with no extended break in programming. Said denial is in violation of P.L. 94-142, the Rehabilitation Act of 1973, 42 U.S.C. §1983, the equal protection and due process clauses of the Fourteenth Amendment to the United States Constitution, and the laws of the State of Missouri.

46. Defendants Mallory, Hall, Department of Elementary and Secondary Education, and State Board of Education have discriminated against the named minor plaintiffs and the minor members of the class in that said defendants have failed and refused to provide or make available to them an educational program in excess of the traditional nine-month school year and with no extended break in programming whereas said defendants do provide and make available to non-handicapped school-aged persons such an educational program. Such discrimination is in violation of the Rehabilitation Act of 1973, 42 U.S.C. §1983, the equal protection and due process clauses of the Fourteenth Amendment to the United States Constitution, and the Constitution and laws of the State of Missouri.

WHEREFORE, for Count II of their Amended Complaint, plaintiffs pray for the following relief:

1. A declaratory judgment that defendants are acting and have acted unlawfully as herein alleged;

2. An injunction prohibiting defendants from failing and refusing to provide or make available to the named minor plaintiffs and the minor members of the class they represent an educational program in excess of the traditional nine-month school year and with no extended break in programming;

3. Such other injunctive and other relief as may be required to prohibit the defendants from engaging in the future in the unlawful conduct alleged herein;

4. An order requiring the payment of reasonable attorneys' fees and the costs and expenses incurred in connection with this action.

CHACKES and HOARE

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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was mailed first class postage prepaid to the attorneys of record in the above action this 31 day of July 1980.

Ken M Chackes

NATIONAL ASSOCIATION OF REHABILITATION FACILITIES

December 10, 1980

The Honorable Paul Simon
Chair
Select Subcommittee on Education
320 Cannon House Office Building
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Simon:

The National Association of Rehabilitation Facilities, an organization representing over 1,000 rehabilitation facilities serving more than 400,000 handicapped people annually, submits the enclosed statement to be included in the hearing record on the oversight hearings on P.L. 94-142 held on November 19-20.

If you have any questions or desire any further information, please call me.

Sincerely,

James A. Cox Jr.
James A. Cox, Jr.
Executive Director

5530 Wisconsin Avenue/Suite 955/Washington, D.C. 20015/Telephone (301)654-5882
Executive Director/James Allen Cox, Jr.

Mr. Chairman:

This statement is submitted on behalf of the National Association of Rehabilitation Facilities (NARF). NARF is a national voluntary membership association with more than 1,000 members including medical, vocational, comprehensive and developmental rehabilitation facilities. NARF members provide medical, developmental, rehabilitation, training, and employment services to over 400,000 handicapped people annually.

This state addresses the effect of P.L. 94-142 on community based rehabilitation facilities.

Background

Since the passage of P.L. 94-142, the country has witnessed great progress in providing handicapped children with the services they need to achieve their maximum level of independence and personal growth. Early intervention reduces dependency in adulthood and increases the opportunity for the handicapped person to become a contributing member of society.

P.L. 94-142 places legal responsibilities for services on the state and local governments accepting funds. Administration and enforcement of the Act rests with the Department of Education. In order to receive funds, states must meet certain eligibility conditions established by the Act and have an approved state plan. For example, each state must:

1. assure that all handicapped children within the state who need special education and related services are identified;
2. assure that a free appropriate public education shall be available;
3. establish procedures to assure that, to the maximum extent appropriate, handicapped children are educated with nonhandicapped children; and
4. establish procedural safeguards.

PREPARED STATEMENT OF JAMES A. COX, JR., EXECUTIVE DIRECTOR, NATIONAL ASSOCIATION OF REHABILITATION FACILITIES

Questions have been raised concerning the role facilities play under the Act. While both educators and rehabilitation professionals support mainstreaming, some believe services are best provided in schools while others believe that facilities, with a long history of providing services to special populations, have the expertise to deliver these services more efficiently and effectively. The implementation of P.L. 94-142 illustrates the need for facilities to establish working relationships with all community organizations and the importance of integrating the services of the school system and facilities to eliminate duplication of services and competition for staff and funds.

Impact of P.L. 94-142 on Rehabilitation Facilities

According to the Education Advocates Coalition, there is evidence that children are not receiving required services. There is also evidence that school systems are duplicating services which are currently underutilized at community facilities.[1] This year NARF surveyed its membership to determine the impact of P.L. 94-142.[2] Some facilities report that the law has resulted in fragmented services and are uncertain as to which programs should be discontinued or expanded. The survey results show:

1. 63.3% of the respondents affected by P.L. 94-142; however, the frequency of positive and negative impact reported was almost equally distributed.
2. An increase in enrollment of all age groups in a majority of facilities.
3. Less of an increase than what would normally be expected in facilities' special education programs.
4. An increase in persons served through adult and infant stimulation programs.
5. Most comprehensive and developmental facilities viewed the impact as negative because of a duplication of services.

6. Vocational and medical facilities viewed the impact as positive with an increase in enrollment and revenue.
7. A trend toward less support from Crippled Children Services and private insurance carriers.
8. An increase in reimbursement from public school contractual agreements.

These results suggest that facilities are focusing on expanding infant stimulation programs while de-emphasizing special education programs and also suggest a trend toward expanding services to the upper age limits.

Also, as part of the survey NARF wanted to determine how many facilities have been involved with serving children under the Act. The results showed that:

1. Only 58.7% of respondents indicated that were involved in implementation of the law.
2. 31.3% of the facilities were involved with handicapped children identification programs (attempts to locate all handicapped children in the community).
3. 34.4% were involved with referral of handicapped children to public schools.
4. 33% were involved with the development of Individual Education Programs (IEP).
5. 13.5% participated in due process proceedings.

From the survey NARF has concluded:

1) the 6-12 year old population has decreased more than expected 2) the number of facilities providing pre-school special education programs has decreased 3) rehabilitation programs appear to be used infrequently by public schools and 4) facilities in which 6-12 population has decreased are expanding their infant and adult programs.

Implementation Issues and Rehabilitation Facilities

P.L. 94-142 is a major step toward recognizing the rights of handicapped children to receive a free, appropriate public education, but is has not, to date, brought about the sweeping changes needed. The key requirement is a commitment to implementation, mobilization and coordination of educational and community resources, and effective enforcement and monitoring by responsible government agencies. The fact that thousands of children and adults are still unserved, not in accordance with the mandate, is a major concern to NARF.

In order to achieve this mandate, NARF believes the following changes in the administration and funding of the Act should be made:

*A closer partnership among state, federal, local education agencies and community based organizations is needed. All existing community resources must be utilized. Within each community, rehabilitation facilities must resolve conflicts over their role and how best to integrate their services with those offered by the school system.

*Full federal funding is required. The 1980 authorization of $1.2 billion was funded at $804 million. This amount is insufficient to properly run the program.

*The definition of the term "related services" must be clarified. Please refer to our counsel's August 8th letter to Dr. Edward Martin, on this issue, attached.

*Older handicapped students need training services to prepare them for competitive employment. Currently there are no employment training program for these students and they are unable to obtain employment. School-sponsored vocational education services and funds are rarely targeted to the needs of handicapped students. Transitional and extended employment training programs need to be established for older handicapped students. Many states provide compensatory educational services to handicapped people beyond the normal limit of 21 years of age. Existing rehabilitation facility programs could easily be expanded to serve this population - and thereby not expect or require school systems to create their own sheltered workshop programs.

NARF fully supports the principles of P.L. 94-142 and urges Congress to support its full implementation. Thank you, Mr. Chairman.

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[1] Report by the Education Advocates Coalition on Federal Compliance Activities to Implement the Education for All Handicapped Children Act (P.L. 94-142), April 16, 1980, Washington, D.C.

[2] "P.L. 94-142: The Impact on Rehabilitation Facilities," by Pamela Catlin, E.D.D. and Sarah E. Lewis, B.S., Emory University, Atlanta Georgia, May 1980 (unpublished).

MAY 15 1980

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Curtis L. Decker
Executive Director

MARYLAND ADVOCACY UNIT FOR THE DEVELOPMENTALLY DISABLED, INC.

May 8, 1980

Congressman Paul Simon
Chairman of the House Subcommittee
on Select Education
227 Cannon House Office Building
Washington, D.C. 20510

Dear Congressman Simon:

The Maryland Advocacy Unit for the Developmentally Disabled, Inc. is the Protection and Advocacy System for the State of Maryland. This agency, handles cases involving all developmental disabilities and a variety of accompanying problems. However, cases involving the implementation of P.L. 94-142 comprise approximately 55% of the caseload.

I draw your attention to the Report by the Education Advocates Coalition on Federal Compliance Activities to Implement the Education for the Handicapped Children Act, issued April 16, 1980. Many of the problems outlined in this report are occuring in Maryland. With very few exceptions, these problems can be eliminated with effective enforcement of P.L. 94-142. For example, the provision of Occupational and Physical Therapy services was the issue which recently forced MAUDD and a private law firm to enter Federal Court. (Alley, Et Al vs. Anne Arundel County Board of Education, Et Al.; Civil Action No. K-79-2211).

I am writing to urge you to adopt the recommendations of the report and utilise trained staff in an effort to carry out the compliance plan.

The oversight powers of the House Subcommittee on Select Education could be used to ensure action from the Department of Education to comply fully with P.L. 94-142.

Thank you for your interest and should you have any questions, please contact MAUDD.

Very truly yours,

Curtis L. Decker
Executive Director

2616 MARYLAND AVENUE • BALTIMORE, MARYLAND 21218 • (301) 383-3400

Oversight hearing 94-142 Oct. 15, 1980

Comments from : Carolyn Lee Dick, parent.

Gentlemen Thank you for giving me this opportunity to address your commitee.

I am Carolyn Lee Dick the parent of two children. I should say two teenagers. Both of which are in the 10th grade and 16 yrs. old. One of my children is in need of special education and PL 94-142.

We presently live in Montana, but have lived in California. I have had a view of two different states' educational systems and special education dispensed by both.

This year I haved training in 94-142 and 504. I would like to thank you for this opportunity. It has made my role as a parent of a handicapped one that is clear goaled for me. In service to parents, is invaluable. I should like to commend the Center of Independent Living, Inc. Disabiltiy Law Resource Center in Berkeley, California for their outstanding work.

There is an area of great concern for me. The stages of grief that a parent or guardian must experience and grow through upon finding out that their child is handicapped. I have heard angry, grief, denial and self punishment from parents who call for assistance with their handicapped child. I feel that this area is omitted from general teaching and the parent is left to deal as best he or she can. In the inservice this subject must be touched on so that a parent will identify their needs and understand the first basic feelings before traveling into 94-142 with this burden upon their shoulders. Teachers and administrators must also become inlighten about this matter, Since a good close working relationship must be a goal between the forementioned parties.

In our state Mr. Joe Luckman of Great Falls Montana, has developed a presentation that is truly informative. I thank him for his insight into the parents of the handicapped.

Now we come to the IEP and it's importance. After reading the hearing book part 1 from the House of Repr. I shutter to think anyone would make light of it's importance as to count the number of pages in it. It is

2. Carolyn Lee Dick comments:

not the number of pages but rather the contents that ~~is~~ important. Inservice is a matter of knowing how to write this tool. It is just that to a tool, or better yet the heart and soul of 94-142. Without it all one has is identification and only that. I can testify before this committee that my son has gone without an IEP and the education he received was zero. Since he is intellegent and struggling to acheive and be like other students his age, many problems have developed and I have seen it most in his behavior in school. Now 3 years down the line the school can see the behavior but NOT the problems that developed the behavior. Had an IEP been in place these 3 years we would not be working with behavior as such but the learning disability. This is one of the reasons for a 50page IEP. Gentlemen, I pray in your wisdom that you will not weaken 94-142 by changing or making light of the IEP. As to address the the matter of financing and cost I can only say WHAT IS THE COST OF A PERSON"S RIGHTS ? The handicapped have been hidden from the public too long and have lived in institutions long enough. If we can put men on the moon surly we can give handicapped persons' their rights. If not, maybe walking on the moon was a dream we should have left to dreamers.

As the parent of two children, I feel for the education of both. I have not seen that the education of my son has hurt my daughter. No funding or budget cuts have adversly affected her education. But I have seen how zero educational growth has affected my daughter. With both children being the same or nearly the same age, they attend the same school and grade level. One is developing and one is not capable of growth without the IEP for a guide. Once again pointing to the NEED for IEP's for the handicapped student.

Labeling and/or divisions of handicapping conditions is another area I feel needs addressing. I am concerned for my child but find ~~while~~ working for all handicapping conditions together benfits my son's education even more fuller. The ~~lines~~ TMR, MR, EMR, LD, ect. should not be viewed or addressed so as to post lines within the handicapped education. I site this example: There are some students who weigh 180# some 110# some 100#. The weight is not the important issue but the ~~goal~~ of indivisual needs. Putting in the division of lines foggs the issue and insures that miss-classification will occure and parents and teachers and administration will learn to identify with only a select few of the handicapping conditions. The condition of handicap needs to be addressed in NEEDS not labels.

My last issue is due process. Please let me say that I feel that due process is a slap on the wrist to a district or the State. They can afford to go through due process but can not afford to go for the sanctions of non-compliance. Due process is expensive to parents, mny of which are already medically burdened. At an inservice training put on by the state these figures were used($2,000.00 to $5,000.00)(Cost to the parent.) That is not a free appropriate education. Then the next problem will be to find a lawyer versed in special education. I do not feel due process is a good working tool for parents; in fact, quit the opposite.

When non-compliance of a district is noted by the state, a definite time line MUST be given in writting to the district and to the parents who have filed the charges. If in fact 94-142 is a law then it must stand as a law.

I thank you for this time for my comments. Please enter these comments into the formal records.

I would appreciate a copy of the final transcript of these hearings.

Thank you

Sincerely

Carolyn Lee Dick

Oct 10, 1980

cc: Max Baucus
Pat Williams
MATCH
BACH
CHIN
UCP Great Falls, Montana

PREPARED STATEMENT OF WINNIE DUNN, MED, OTR, OCCUPATIONAL THERAPIST, LEARNING DISABILITIES SPECIALIST

SPECIAL EDUCATION FOR THE HANDICAPPED — OCCUPATIONAL THERAPY SERVICES

I am testifying in behalf of the occupational therapists in the Kansas Occupational Therapy Association (serving Kansas and Western Missouri) and the Missouri Occupational Therapy Association. We have several concerns regarding services for handicapped children in Missouri.

First of all, there has been some difficulty in defining the term 'ancillary service'. For example, some school districts limit that definition to one population of children, when occupational therapists can, and are also being of service to other populations, such as learning disabilities, behavioral disorders, speech and language, and developmental delays.(in addition to the orthopedically handicapped populations.)

Secondly, we are concerned that there are some children who are in need of occupational therapy service, who are not presently in need of other services. Being classified as an 'ancillary service' limits us to the population of children who are already in another program. This is especially important with respect to the early intervention programs being initiated and encouraged throughout the state.

Finally, there are situations in which occupational therapists are being used inappropriately. We have encountered situations in which minimal consult time was requested by the districts, when more time was necessary to provide adequate service. The districts are then stating that 'occupational therapy services are provided', even though they are inadequate services for the child or children.

We are pleased with the strides that Missouri has made in its service of handicapped children, and are anxious to continue being a part of these endeavors.

wd

Winnie Dunn MEd, OTR
Occupational Therapist/
Learning Disabilities Specialist

(904 N.E. 60th Terrace,K.C.,Mo.64118)

Prepared Statement of Linda Early, North Kansas City School District

My name is Linda Early. I have a B.S. Degree in Learning Disabilities and a M.S. Degree in Reading. I have taught in a self-contained learning disabilities classroom for the past seven years in the North Kansas City School District.

A self-contained L.D. classroom is for those children who need a special school program to develop compensatory learning methods. I, as the classroom teacher, strive to teach through the student's strongest area of functioning to improve academic functioning.

I believe very strongly in the principle of Public Law 94-142 and have written and worked with the Individualized Educational Plan. For me, working closely with other staff members and parents in the development and implementation of the I.E.P. has been very positive. I believe the I.E.P. has set a precedent for positive working relationships between the home and school.

The I.E.P. has taken the mystery and fear out of special programs. When goals and objectives are stated clearly, nothing is left to speculation. The effort put forth by the staff to work with parents on the development of the I.E.P. is success oriented and becomes a self-fullfilling prophecy.

The I.E.P. provides the child with a coordinated program and effort between those individuals who come in contact with the child. All staff members become familiar with the child's strengths and weaknesses in the academic setting.

The I.E.P. is a valuable part of special services. There still remain some concerns. I.E.P. development takes a considerable amount of time to implement and can take away from actual teaching time with students. The teacher of the self-contained classroom is responsible for pre and posttesting for the I.E.P. development. This testing time is taken out of class time. Testing of one student is done in front of other students which has the potential to create a difficult situation.

The Individualized Educational Plan is important, but I hope that the mechanics, the legalities and the time factor do not become so paramount in our thinking that we lose sight of the child waiting to be taught.

STATE OF NEVADA
DEVELOPMENTAL DISABILITIES ADVOCATE'S OFFICE
940 MATLEY LANE, SUITE 9
RENO, NEVADA 89502
(702) 784-[illegible]
TOLL FREE 1-800-[illegible]

May 1, 1980

Congressman Paul Simon
Chairman of the House Subcommittee
on Select Education
227 Cannon House Office Building
Washington, D.C. 20510

Dear Congressman Simon:

I am writing regarding the recent report published by the Children's Defense Fund, Mental Health Law Project, regarding implementation and compliance with Public Law 94-142, the Education of All Handicapped Children Act of 1975.

As an advocate for such children in the State of Nevada, I find that most of the deficiencies outlined in this report occur in our state as well as in many others.

In this light, I strongly urge you to exercise the Subcommittee's oversight powers to ensure immediate and responsive Department of Education action, regarding full implementation and compliance with Public Law 94-142.

I only hope you realize that this law is a landmark as far as deinstitutionalizing and better educating the youth of our country.

Thank you for your assistance in this matter.

Sincerely,

Holli Elder

Holli Elder
Project Director

HE/fb

cc: Judge Shirley M. Hufstedler
Department of Education

Jane Bloom Yohalem
Children's Defense Fund

May 12, 1980
654 Sunset Dr.
Naperville, Il 60540

Senator Arthur Berman
State Capitol Building
Springfield, Il 62706

Dear Senator Berman:

I am uneasy about Bill 1729. As it now stands, it raises more problems than it answers.

The first concern is the sentence (lines 27-30, p 3 on the copy I have); "The Superintendent or Director may disapprove of such a placement only upon the determination that there is an in-state facility which can meet the child's needs and which is willing to accept the child."

This means that the appropriate determination by school personnel and parents is meaningless. It can be wiped out by the decision of one person acting soley from fiscal concerns. There is no due process or other recourse by parents and advocates indicated. Even if recourse is written into the bill, the delays caused by this further complication of the placement process will be detrimental to the child.

I was dismayed by your comments to your committee when this bill came before them. You assured them that the costs of the bill would diminish as children were placed in in-state facilities. This confirms our worst fears about the administration's sudden interest in in-state placement. It will not save ONE CENT to provide education and treatment IN Illinois comparable to what is now provided OUT of state in the approved facilities utilised by DMH and IOE. The only way the state will save money is by placing children in facilities that provide reduced programs and inadequate services. The implications of the inclusion of the DCFS director in plans for instate facilities in lines 13-15 of page 8 further suggest plans by the state to consign even more children to the inadequate overcrowded custodial holding pens now disgracing our human services area.

It was determined some time ago in Illinois that placement of low incidence handicapped requiring specialized services would be most cost effective in existing private in or out of state facilities. The climate in Illinois with its burdensome paper work, administrative delays, and inadequate fee allowances for its own citizens in facilities has been so restrictive that few facilities have located here. The reputable schools, therefore, are out of state. They do NOT cost more than comparable programs anywhere.

Setting up good programs in Illinois will require lengthy pilot programs, need assessments, and staffing. There are several different kinds of programs for children and adolescents. Each meet needs of some children. Which are to be provided? Children with emotional disturbance, behavior disorders, or mental illness MUST have therapy. Will that be provided? It isn't now in any Illinois facility except a few SHORT term hospitals. Will rates allowed by the GPCRB be increased sharply so that Illinois citizens will be paid for in full? Now they are subsidized by charities and other states in out-of-state facilities and by the private sector or charities in-state. Where such subsidizing is not available by a bulk of private patients or students and where charities fail to make up the difference, providers must attempt to work with totally inadequate funds and eventually close--witness North Aurora Care Center.

The need is to provide legislation that requires payment for services now mandated by federal law AND provided by several excellent cost efficient facilities in the country.

The second major area of concern is in the use of DMH to supply funds for these placements. The desire to use Title 19 and 20 funds is understandable, but I question the legal implications of requiring parent payments and of insisting that therapy and related services are NOT required by 94-142.

A great deal more in the way of amendments to the Mental Health Code is required if DMH is to meet these mandates.

1. DMH provides ICGs only to age 18. Illinois' special education act and PL 94-142 go to age 21.

2. DMH pays ICGs only to non-hospital facilities. (line 3, page 2 of 1729 still has this.) My daughter's ICG request has been refused because the part of Brown Schools she is in has obtained accreditation by the American Association of Psychiatric Hospitals to utilize insurance benefits of parents. This line is aholdover from the original intent of the ICGs which was to provide placement of children leaving the short term hospitals in Illinois. Many of the good facilities for children and adolescents have obtained such accreditation even though they are clearly not hospitals in the old sense of the word. They are on IOE's list as schools.

3. DMH does not now have on its list of accredited facilities most of the schools IOE approves.

4. DMH has inadequate funding, inadequate staffing, and an inefficient service delivery. My daughter was placed last June. After hearing about ICGs and finally obtaining, through an attorney, an application, I submitted forms in September. DMH has never responded to my or my attorney's phone calls or letters. My attorney and I were encouraged by conversations with various personnel to assume that an ICG would eventually be forth coming. My attorney learned yesterday, however, that it has been denied. Even though Brown is on both IOE's and DMH's lists, it apparently does not qualify for ICGs. If we had waited as most families must do for approval and contracts, she would still be out of treatment ONE YEAR LATER. This sub region

has had 2 different directors since September and now has none.

5. DMH has fees approved through the Board which meets in secret denying access to families, recipients, and providers who could explain needs and charges. That Board also denies access to its decision making to legislators and other public advocates.

There are further provisions that should be made. Lines 15-18, p 3 mention the IEP or decision made by due process hearing. That should be broadened somewhat. If a staffing decision is for residential placement, I believe it can result in a multi disciplinary staffing report not an IEP. The IEP then would be prepared by the receiving facility. Emergency placement may also result in need for placement without either an IEP or a due process hearing. IOE personnel could help with this wording.

Provisions should be made for handling emergency placement by parents. Usually this has an insurance component that takes over at first, but not always. SB 1000 had good language for this.

Please consider these suggestions. I am sure that persons with more experience in legislation and in special education can be helpful to you. However, these concerns occur to me as I read the bill and relate it tomy experience and that of the many parents with similar problems.

Urgent as the matter of payment for placement is, it is important that the bill not be come a vehicle for adding bureaucratic delays. It is especially crucial that it not provide the means to dump children into inappropriate facilities where their special needs cannot be met.

Sincerely yours,

Patricia Emmerich

Patricia Emmerich
Legislative Chairperson
Childen's Mental Health Coalition

cc: Representative Hoffman, Schneider, Satterthwaite
others

Berman

ADOPTED

MAY 13 1980

1980

81st G.A.

Amendment No. 2

TO SENATE BILL NO. 1729

Offered by Senator Berman

On 5/13/ 1980.

Ordered printed 5/13/ 1980.

Adopted 5/13/ 1980.

LRB81U9782XXakam02

AMENDMENT TO SENATE BILL 1729

AMENDMENT NO. 2. Amend Senate Bill 1729 on page 1, by deleting the title and inserting in lieu thereof:

"AN ACT relating to the education of certain children.";

and

by deleting everything after the enacting clause and inserting in lieu thereof:

"Section 1. Section 7.1 of "An Act codifying the powers and duties of the Department of Mental Health and Developmental Disabilities", approved August 2, 1961, as amended, is amended to read as follows:

(Ch. 91 1/2, par. 100-7.1)

Sec. 7.1. The Department of Mental Health and Developmental Disabilities shall supplement the amount a family is able to pay as provided in Sections 5-105, 5-106, 5-108, 5-110, 5-111 and 5-116 of the Mental Health and Developmental Disabilities Code and the amount available from other sources, including special education tuition, room and board; provided that the total amount paid including the Department's share shall not exceed a uniform rate to be determined from time to time by the Department according to Sections 5-106 of the Mental Health and Developmental Disabilities Code. The Department shall assist families in placing mentally ill, emotionally disturbed or behavior disordered children who require psychiatric or psychological treatment. Placements shall be in licensed private non-hospital facilities when no appropriate care is available in Department facilities. ~~To assist families to place mentally ill children, for whom no appropriate care is available in Department facilities, in licensed private facilities, the Department shall supplement the amount a family is able to pay, as determined by the Department and the amount available from other sources, provided the Department's share shall not exceed a uniform maximum rate to be determined from time to time by the Department.~~

Section 2. Section 14-7.02 of "The School Code", approved March 18, 1961, as amended, is amended to read as follows:

(Ch. 122, par. 14-7.02)

Sec. 14-7.02. Children attending private schools, public out-of-state schools or private special education facilities. The General Assembly recognizes that non-public schools or special education facilities provide an important service in the educational system in Illinois. If because of his or her handicap the special education program of a district is unable to meet the needs of a child and the child attends a non-public school or special education facility, a public out-of-state school or a special education facility owned and operated by a county government unit that provides special educational services required by the child and is in compliance with the appropriate rules and regulations of the State Superintendent of Education, the school district in which the child is a resident shall pay the actual cost of tuition for special education and related services provided during the regular school term and during the summer school term if the child's educational needs so require, excluding room, board and transportation costs charged the child by that non-public school or special education facility, public out-of-state school or $4,500 per year, whichever is less.

and shall provide him any necessary transportation. The State Board of Education shall promulgate rules and regulations for transportation to and from a residential school. Transportation to and from home to a residential school more than once each school term shall be subject to prior approval by the State Superintendent in accordance with the rules and regulations of the State Board.

If, based on the child's Individual Education Plan or the final decision resulting from a due process hearing, a behavior disordered child is to be placed in a nonpublic out-of-state residential facility, the child's Individual Education Plan or the decision resulting from the due process hearing shall be submitted within 10 days to the State Superintendent of Education. In addition, if the child requires psychiatric or psychological treatment, the Individual Education Plan or the decision resulting from the due process hearing shall also be submitted to the Director of the Department of Mental Health and Developmental Disabilities. The placement of the child in such a nonpublic out-of-state residential facility shall be subject to the approval of the State Superintendent of Education and the Director of Mental Health and Developmental Disabilities if the child requires psychiatric or psychological treatment. If the Superintendent or the Director does not object to the placement within 21 days after the receipt of the Individual Education Plan or the decision resulting from the due process hearing, the placement shall be considered final. The Superintendent or Director may disapprove of such a placement only upon the determination that there is an appropriate in-state program which can meet the child's needs and which is willing to accept the child. The Superintendent or Director, shall inform the parent and the school district in the notice of disapproval of the name and address of the facility located in the State which can meet the child's needs and is willing to accept the child.

Any party aggrieved by the decision of the State Superintendent or the Director of the Department of Mental Health and Developmental Disabilities disapproving an out-of-state placement may seek review in the circuit court. The court shall hear evidence at the request of the parties and basing its decision on the preponderance of the evidence shall grant such relief as the court determines appropriate.

The Department of Mental Health and Developmental Disabilities, in accordance with the provisions of Section 7.1 of "An Act codifying the powers and duties of the Department of Mental Health and Developmental Disabilities," approved August 2, 1961 as amended, shall assist families in placing children who require psychiatric or psychological treatment, and shall supplement the amount the family is able and required to pay for items and services related to psychiatric or psycholgical treatment for which reimbursement is not authorized under this Act or Public Law 94-142.

A school district making tuition payments pursuant to this Section is eligible for reimbursement from the State for the amount of such payments actually made in excess of the district per capita tuition charge for students not receiving special education services. Such reimbursement shall be paid in accordance with Section 14-12.01 for each school year ending June 30, to the board of each such school district, through the regional superintendent of schools, on the warrant of the State Comptroller in accordance with the payment times and procedures contained herein.

No child shall be placed in a special education program pursuant to this Section if the tuition cost for special education and related services increases more than 10 percent over the tuition cost for the previous school year or exceeds $4,500 per year unless such costs have been approved by the Governor's Purchased Care Review Board. The Governor's Purchased Care Review Board shall consist of the following persons, or their designees: the Directors of Children and

Family Services, Mental Health and Developmental Disabilities, Public Health, Public Aid, Vocational Rehabilitation and the Bureau of the Budget; the State Superintendent of Education; and such other persons as the Governor may designate. The Review Board shall establish rules and regulations for its operations and shall establish uniform standards and criteria which it shall follow.

The Review Board shall establish uniform definitions and criteria for accounting separately by special education, room and board and other related services costs.

The approval or disapproval of a special education facility rate by the Review Board shall be subject to review in the circuit court upon the petition of a school district or a nonpublic school or special education facility. The review shall be limited to a determination of whether or not the rules and regulations and the standards and criteria of the Review Board were properly applied to that facility. If the Review Board has disapproved a facility which could otherwise meet the special education needs of a child in accordance with that child's Individual Education Plan and if the State Superintendent of Education or the Director of the Department of Mental Health and Developmental Disabilities have determined that no alternative placement is available, the Review Board upon review of its decision shall be required to prove that the application of its rules and regulations and its standards and criteria to the facility was reasonable and in compliance with all applicable laws and regulations.

The Board shall ~~also~~ establish guidelines for the coordination of services and financial assistance provided by all State agencies to assure that no otherwise qualified handicapped child receiving services under Article 14 shall be excluded from participation in, be denied the benefits of or be subjected to discrimination under any program or activity provided by any State agency.

The Review Board shall review the costs for special education and related services provided by non-public schools or special education facilities and shall approve or disapprove such facilities in accordance with the rules and regulations established by it with respect to allowable costs.

The Review Board may employ staff and contract with independent auditors for such services as may be needed to verify that all fees, tuitions and charges are fair and justified.

The Review Board shall seek the advice of the Advisory Council on Education of Handicapped Children on the rules and regulations to be promulgated by it relative to providing special education services.

If a child has been placed in a program in which the actual cost of tuition for special education and related services excluding room, board and transportation costs, exceed $4,500 and such costs have been approved by the Review Board, the district shall pay such total costs which exceed $4,500. A district making such tuition payments in excess of $4,500 pursuant to this Section shall be responsible for an amount in excess of $4500 equal to the district per capita tuition charge and shall be eligible for reimbursement from the State for the amount of such payments actually made in excess of the districts per capita tuition charge for students not receiving special education services.

If a child has been placed in an approved individual program and the tuition costs including room and board costs have been approved by the Review Board, then such room and board costs shall be paid by the appropriate State agency subject to the provisions of Section 14-8.01 of this Act. Room and board costs not provided by a State agency other than the State Board of Education shall be provided by the State Board of Education on a current basis. In no event, however, shall the State's liability for funding of these tuition costs begin until after the legal obligations of third party payors have been subtracted from such costs. If the money appropriated by the General Assembly for such purpose for any year is insufficient, it shall be apportioned on the basis of the claims approved. Each district shall be paid an estimated claim payment, through the regional superintendent of schools, on the warrants of the State Comptroller equal to one-half of the estimated reimbursement approved under this section on December 30 and three-fourths of the estimated reimbursement minus the December 30 payment on March 30. Each district shall file a final claim with the regional superintendent on or before June 30. The regional superintendent shall transmit such claim to the State Superintendent of Education on or before July 15. The State Superintendent of Education shall determine the accuracy of such claims and make final payment to each district, through the regional superintendent of schools, on warrants of the State Comptroller, on September 15. Such current state reimbursement shall be reduced by an amount equal to the proceeds which the child or child's parents are eligible to receive under any public or private insurance or assistance program. Nothing in this Section shall be construed as relieving an insurer or similar third party from an otherwise valid obligation to provide or to pay for services provided to a handicapped child.

If it otherwise qualifies, a school district is eligible for the transportation reimbursement under Section 14-13.01 and for the reimbursement of tuition payments under this Section whether the non-public school or special education facility, public out-of-state school or county special education facility, attended by a child who resides in that district and requires special educational services, is within or outside of the State of Illinois. However, a district is not eligible to claim transportation reimbursement under this Section unless the district certifies to the State

Superintendent of Education that the district is unable to provide special educational services required by the child for the current school year.

Nothing in this Section authorizes the reimbursement of a school district for the amount paid for tuition of a child attending a non-public school or special education facility, public out-of-state school or county special education facility unless the school district certifies to the State Superintendent of Education that the special education program of that district is unable to meet the needs of that child because of his handicap and the State Superintendent of Education finds that the school district is in substantial compliance with Section 14-4.01.

Any educational or related services provided, pursuant to this Section in a non-public school or special education facility or a special education facility owned and operated by a county government unit shall be at no cost to the parent or guardian of the child. However, current law and practices relative to contributions by parents or guardians for costs other than educational or related services are not affected by the ~~this~~ amendatory Act of 1976.

The State Superintendent of Education in cooperation with the Directors of Mental Health and Developmental Disabilities and Children and Family Services shall review the availability of special education facilities and programs in Illinois and shall develop plans to reduce the placement of handicapped children in out-of-state special education facilities and to assure the most effective utilization of existing facilities. These plans shall include steps to encourage the expansion of existing facilities and the development of new facilities in Illinois where special education services are inadequate. The State Superintendent shall submit the findings from this review of existing special education programs and facilities and the plan for the development and utilization of such programs and facilities to the General Assembly and the Governor by March 31, 1981.

Section 3. This amendatory Act takes effect July 1, 1980.".

STATE OF ILLINOIS
DEPARTMENT OF MENTAL HEALTH
AND DEVELOPMENTAL DISABILITIES

Robert A. de Vito, M.D., Director

JOHN J. MADDEN MENTAL HEALTH CENTER
1200 South First Avenue, Hines, Illinois 60141
Telephone: (312) 345-9870

Carlos Castellanos, M.D., Superintendent

May 13, 1980

Mrs. Stella Schoen
c/o Cellucci & Kaschellis
1155 So. Washington
Naperville, Ill. 60540

Dear Mrs. Schoen:

RE: Caroline Emmerich

This will confirm our conversation of May 12 that the Department of Mental Health & Developmental Disabilities cannot approve an Individual Care Grant for an applicant who is being treated in a licensed medical facility.

Since your client's daughter is being treated at The Oaks I.C.U. of Brown Schools, her application cannot be approved.

Should Caroline be readmitted to a non-medical residential program the application can be renewed and a determination review will be held.

It should be remembered that even if at that time an Individual Care Grant is approved, it will be terminated on December 9, 1980, Caroline's eighteenth birthday.

Sincerely,

William E. Fields
Director, Subregion 9

cc: Paulette Rose

For Your Information Only
No Action Necessary

TESTIMONY BEFORE THE ILLINOIS GOVERNOR'S PURCHASED CARE REVIEW BOARD

Special Session on Reimbursements to Elan One

September 18, 1979

Janet Sullivan, M.S.W. -- Children's Mental Health Coalition

Emotionally disturbed children in Illinois are in a critical situation because of the Governor's Purchased Care Review Board's structure, policies and procedures. Some children, such as those at Elan, are being threatened with the termination of their placements because of the complex rating and slow reimbursing system of the Board; others are unable to get into desperately needed placements because the Board has not yet set some rates and at the same time has said contracts cannot be made until rates are set; and still other children are finding bills on their parents doorsteps for therapuetic services because the Board has ruled that therapuetic services for emotionally disturbed children are not reimbursable.

The Children's Mental Health Coalition, representing over 200 parents of emotionally disturbed children and professionals who serve these children, agrees with the intent of establishing an interdepartmental agent to evaluate the quality of programs for special children, but questions:

Why the Board seems to place its primary focus on the cost, rather than quality, of services?

Why such emphasis is placed on evaluating the privately contracted services to a few Illinois children, while the services provided through the public departments represented here, go almost unmonitered by "outside agents," even though they serve many more children.

Why the private providers of services are not represented on the Board.

Why are parents organizations not represented on the Board.

Residential and day treatment centers for emotionally disturbed children (both in and out of state) are being placed in precarious financial positions or are refusing to accept Illinois children because:

1. The Board is made up of persons who have complex jobs which do not allow them to give full attention to the Board's work.

2. The Board has had no paid staff members until just a few weeks ago and presently has only one person.

3. The Board is lacking persons who are in a direct treatment capacity with emotionally disturbed children, therefore is ill-equipped to programmatically evaluate treatment centers for emotionally disturbed children.

4. The Board's rating system is so complex that many schools would rather drop or refuse to admit Illinois children rather than go through it. (See Willowglen and Elan letters.)

5. The Board's rating system is so complex that the Board itself has been unable to administer it with its limited staff -- witness the fact that many schools have not received their rates and have thus been unable to establish contracts for new children.

6. The Board's reimbursement system is such that schools do not receive money until months after they have started serving Illinois children, and sometimes never receive all of it.

7. The Board ruled that therapuetic services to emotionally disturbed children are not reimburseable, causing day and residential centers to have to carry this expense themselves or charge parents for it in violation of PL 94-142 and Section 504 of PL 93-112.

It is both child-effective and cost effective to utilize private day and residential centers to provide the mandated "continuum of services" to emotionally disturbed children. Let's not destroy the private centers by our $ consciousness, and then wonder why we have to rebuild expensive, long-term state institutions for the chronically ill adult.

The Children's Mental Health Coalition recommends that the Governor's Purchased Care Review Board:

a. accept the rates paid by the states in which the out-of-state centers exist.
b. expidite in-state placements by accepting the rates that were requested by each in-state center.
c. recind the ruling not to reimburse for therapuetic services.
d. add three private providers and three parent organization representatives to the Board.
e. appoint one full-time person from each State department to the Board to spend one half-time on Board work and one half-time implementing genuine interdepartmental cooperation and monitoring.
f. develop policies (with parent and private sector input) that put "teeth" in interdepartmental cooperation.

You are invited to hear parents tell about progress their children have

November 12, 1979
9327 Hamilton Avenue
Chicago, Illinois 60620

Mr. Don Blodgett
Deputy Commissioner for Compliance and Enforcement
200 Independence Avenue S.W.
Washington, D.C. 20201

Dear Mr. Blodgett:

Last Month, I wrote you about the Governor's Purchased Care Reveiw Board's reactions after you left their meeting on October 2nd. As Chairman of the Beacon Therapeutic School P.A.T.O. 94-142 Investigation Committee, I'd like to expand on that letter with a brief overveiw of events and their impact on Beacon Consumers.

Our efforts began on August 20th in reaction to Beacon's letter demanding $600 per student in four days, and another $600 on January First. The Purchased Care Reveiw Board's Ruling 3.21, Making parents liable for therapy costs, was cited as their authority.

Our faith in Beacon's professional performance has generally withstood our investigations. However, it became obvious that 94-142 implementation would be up to parents when the Director and her Board announced that implementation efforts would close the school by alienating funding. I pray that you understand the terror that threat coupled with our stupidity instilled in parents! Each of us experienced hell to identify and obtain the services our children require while local government withheld information on rights and schools.

Despite our turmoil, we understand the school's dilemma. They are funded on a reveiw of a two year old cost report; not on a compilation of I.E.P. requirements and without cost effectiveness standards. This illogic leads to lies, personality contests for funding, and kills improved services ; especially in ghetto schools.

Our pressure caused the school to reduce and delay payments to $100 per month beginning in January; with the threat of reducing therapeutic services. That deadline is approaching!

At the November Purcharsed Care Reveiw Board meeting, Dr Cronin shut the door on achieving compliance through them!

You, the courts and the media are our remaining hopes! This problem is seriously affecting our children's progress. Disruption of our homes and the school has already caused one student to regress to the need for residential care. PLEASE HELP!

Sincerely,

L. V. Zayauskas

Testimony before The Governor's Purchased Care Review Board

Special session on Therapuetic Reinbursement.

Herbert Wheeler Parent, Teacher of Severly Emotionally Disturbed Children

I am both the parent of an emotionally disturbed child and the professional teacher of emotionally disturbed children. My credentials in the former are accidental; in the later a Masters in Education - Early Childhood/E.D. and five years experience in the University and private sectors working with the severly disturbed. As a parent I am daily grateful for the care my daughter has been fortunate enough to recieve; as a teacher I am anguished over the discrepency between her good fortune and the misfortune of the equally needy children I work with.

The parents of those children are not here to testify. They are the poor of Chicago's Uptown and South Side. The six children that I am working with at present are luckier than most even to be in school. None recieve any sort of therapy other than what I can provide. Because of this, none recieve an 'appropriate' education as mandated in Federal Law 94-142. I am not a teacher, I am a professional baby-sitter.

The pain is stronger than words can convey, pain for this hardly unique class that will never know life as my daughter will; pain for the inadequacy of what I can no longer accomplish. I am ashamed to be a teacher in this situation; as a parent I bear much guilt for the disparity between my daughters theraputic placement and the conditions under which I work. THERAPY IS ESSENTIAL, and that is just a starting point.

Testimony before The Governor's Purchased Care . .iew Board

Special session on Therapuetic Reinbursements.

Carolyn Wheeler, parent -- President, Children's Mental Health Coalition

I am here to urge you to change your ruling that therapy services for Emotionally Disturbed childrn are non-reinbursable. This ruling (1) leaves emotionally disturbed children without the support services most needed or (2) causes us the parents to carry the expense of therapy contrary to Pubic Law 94-192.

My daughter first began recieving services in the spring of 1973. At this time my daughter was 3 years old. I took my daughter in for testing and subsequently entered her for treatment at my own expense. By the fall of 1975 my daughter was attending a Private Day Treatment Program connected with a local hospital. As I was the sole support of my family this was a tremendous financial burden. As the severity of my daughters disturbance became more apparent it was suggested to me that either I stop working or I place her in Residential care. I remained at home. To support my family I sold all my investment stocks - I borrowed money against my share in a limited partership business - I sold anything I had that had any cash value including my household furniture. At the end of that year when it was evident that the only treatment that would be appropriate was "a totally therapuetic mileau setting". My daughter was placed at the Orthogenic School in Chicago, Illinois.

At this point I was financially destitute and in debt. I was fortunate in that the Day Treatment School which my daughter had been attending succeded in securing an Individual Care Grant for her placement in Residental treatment. I also obtained a great deal of information and help from the Department of Mental Health after intial proceedures had been instigated by the school.

Now, again, I could be facing insurmountable fiancial burdens. If my daughter were to become ineligible for the Care Grant Program I would be responsible for costs of about $7,000.00 per year. This is the dollar difference between cost of care and allowed remimbursement. My daughter has made excellent progress within the school she now attends and is on her way to being a fully functional adult. My husband and I would not be able to financially afford $7,000 out of pocket to keep her at the school. My husband is a teacher of E.D. children in a private Day School.

The Orthogenic School is a psychiatric facility which is why my daughter was placed there in the first place by the public school system and her Doctors. How can it now not be covered by reimbursement proceedures if therapy was the necessary component of my daughter's educational placement needs.

Again, I urge the Governor's Purchased Care Reveiw Board to change its statute to allow reimbursement for therapy to private day and residential centers.

8308 Kilpatrick Avenue
Skokie, Illinois 60076

October 16, 1979

Mr. Donald Blodgett
State Plan Office
Bureau of Education for the Handicapped
Dept. of Health, Education and Welfare
Office of Education
Washington, D.C. 20202

Dear Mr. Blodgett:

I am a resident of the State of Illinois and have a child that is now a residential student of the De Sisto at Stockbridge School in Stockbridge, Mass. My daughter was originally in Special Education in District 219 in Skokie, Illinois and she has been in out-of-state residential placement since January of 1978.

The De Sisto School was purchased and formed in September 1977 by Michael De Siso who had formerly been affiliated with the Lake Grove School in New York (which my daughter Cathy attended). When he purchased the school in Stockbridge in September of 1978, 95% of the enrollment went with him. As a "new" school they made application to the State of Illinois and used estimated figures to compute what yearly enrollment charges would be. The school was registered with the State of Illinois and properly certified. Application was made for a rate by the Governor's Purchase Care Review Board of Illinois. They set a rate of $7,499.00 for a 9-month period. The actual cost per student for room, board, tuition and related services (including the necessary, integral part of the program - therapy) was $10,400.00.

To be in compliance with Bill PL 94-142 my Niles School District would not re-imburse us because we had to pay the difference between the $7,499.00 rate and the actual cost of $10,400.00. We filed a Due Process Appeal and won; however, District 219 appealed that decision and we went before members of the Illinois Office of Education for a hearing. We are still awaiting their decision. To this date, we have not as yet received one penny for the education of our daughter.

The above applied to the year 1978-1979 .. now the years 1979-1980 are here and my daughter is again at De Sisto School. Because they were still classified as a new school, they had to submit an audit as to the charges for each student to the Rate Review Board and for the past summer fumbled along with the complicated forms required. They beseeched the office of Jo Ann Day for advice and with the help (sic!) of her office were loaded down with "unallowables" resulting in a total figure per child of $4500.00. IMPOSSIBLE!! It costs the local school district $7500.00 to educate a child and that is when the child goes home at 3:00.

The Governor's Purchased Care Review Board had, of last week set a rate of $6100.00 -- as of today I understand that the rate was lowered to $5100.00. It is conceivable that it will be lowered even further. They have not and are not acting in good faith and have done everything in their power (and I might add not in keeping with either the Federal and State laws) to thwart De Sisto School of a fair and equitable rate. This affects our children and deprives them of a free education.

The actual cost per child at De Sisto School this year will be $22,600.00, and that is what we parents will have to pay if we want our child to remain there. The school districts are again going along with P.L.94-142 in refusing to allow the parents to pay the difference and, therefore, that means that we will have to pay the entire amount - if we can afford it.

The De Sisto School will no longer take children from the State of Illinois and, as I said, are sending the ones they have home unless the rate is changed by the Governor's Purchased Care Review Board at their hearing scheduled on November 6.

I would have to write 20 pages of material to explain what this school has done for my daughter. She was a violent, uneducated, animal that had been privately treated for years before she came under the supervision of Michael De Sisto -- and, now she is becoming an intelligent young woman that we can be proud of.

I appeal to your office to check this Board out - they are doing criminal things here in the State of Illinois and, since they are Federally funded, it is up to your office to supervise them. I have no doubt that you have received countless complaints from Illinois parents regarding this Board and I beseech you to listen to us!

We Illinois De Sisto School parents will be meeting with Jo Ann Day and either Gail Lieberman or Mr. Fisher on Monday, October 22. I understand that Lawrence Coles, Jr. (a De Sisto School parent) sent you a mailgram today asking you to attend. I hope you will attend to observe and become aware of what goes on with our Illinois politicians, our children, our parental anguish, and Federal funds.

Most sincerely yours,

Lorayne Schmitman

Lorayne Schmitman
(Mrs. Marvin)

cc: Gary Hahn, Dist. 219
Ms. Jo Ann Day
Mrs. Gail Lieberman
Senator Arthur Berman
Congressman Paul Simon
Senator John Nimrod
Rep. Gene L. Hoffman
Attorney, Ellis Levin
Senator Alan Greiman
Senator Howard Carroll
Governor James Thompson
Michael De Sisto

TESTIMONY ON THE INDIVIDUAL CARE GRANT CRISIS BEFORE THE HUMAN RESOURCES COMMITTEE OF THE HOUSE OF REPRESENTATIVES SEPTEMBER 11, 1979

After ten years of Special Education classes for my emotionally disturbed 13 year old son, Joseph Borowski, School District 54 in Schaumburg, Illinois, and my son's private psychiatrist of four years, recommended a private residential school.

Read Zone Mental Health Center, Chicago, Illinois, suggested Willowglen Academy, Milwaukee, Wisconsin as the only school appropriate for Joseph.

After nine months of phoning, letter writing, and anxiety nothing happened regarding placement. I visited Willowglen. After a meeting with the director, found out why my son was not being admitted. We discovered that Read never informed me about an I.C.G. (Illinois Care Grant). Therefore, all my months of effort had been in vain as no placement could have been possible without the Grant.

After more months of applied pressure, too lengthy to go into here, my son was granted the I.C.G. two years ago.

Please refer to copies of Willowglen letters I have received in September 1978-79. After all the frustration to obtain the Grant I must constantly live with the fear that Illinois Bureaucracy will foul up the I.C.G. and my son will be uprooted from this very wonderful treatment center. His improvement these last two years have been remarkable.

It is urgent that the Department of Mental Health be encouraged to write clear and understandable guide lines for parents who need I.C.G. First and above all to inform them that I.C.G. exists. Which is the first part of this statement you can see was not revealed to me.

The Department of Mental Health seems to have the attitude that there is not enough money available for Grants so why bother to tell parents to apply.

We, the parents of the Childrens Mental Health Coalition, appeal to you members of the Human Resources Committee to increase the appropriations for I.C.G. for emotionally disturbed children. In order that the Department of Mental Health can provide appropriate residential services to more of our children.

At the present amount of $1.3 million dollars for I.C.G., only a little over 100 of our children are being provided for in Illinois Treatment Centers. I cannot imagine how many more may be waiting as my son was.

Rita A. La Loggia
Spokes Person for the Childrens Mental Health Coaliti

STATE OF ILLINOIS
DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES

GENERAL OFFICE
401 South Spring Street
Springfield, Illinois 62706

June 16, 1978

Mr. Don Fritz, MSW
Executive Director
Willowglen Academy
3030 West Highland Avenue
Milwaukee, Wisconsin 53208

Dear Mr. Fritz:

This is to acknowledge receipt of your June 1, 1978, letter and to respond to the questions you raised.

I have discussed your dilemma with most of the individuals referred to in your letter. It is agreed that Willowglen Academy be given a 60-day extension beyond June 30, 1978, to complete the State of Illinois cost forms. In the interim, we have asked Ms. Karen Moe, Department of Public Health, Office of Health Finance, to talk with her rate setting counterpart in the State of Wisconsin to determine whether or not the State of Wisconsin, Division of Community Services, will permit Wisconsin facilities to accept a lesser rate of care for children placed in Wisconsin facilities from other states. Should the State of Wisconsin insist the State of Illinois to pay the Wisconsin rate and should State of Illinois rate methodology not justify that State of Wisconsin rate, then the Department will have to work toward returning those Illinois funded residents back into Illinois programs.

We cannot make a commitment to guarantee payment for services to Illinois children at the approved Wisconsin rate. We will not be able to commit ourselves to a rate of reimbursement for FY 79 until Willowglen Academy has completed the State of Illinois cost determination forms and a rate recommendation received from the State of Illinois, Department of Public Health, Office of Health Finance.

Department policy requires facilities in the Individual Care Grant Program to submit cost data on State of Illinois forms if they have three (3) or more DMHDD funded clients. After receiving and analyzing the Willowglen Academy cost data, the Office of Health Finance will apply our rate-setting methodology and will recommend a rate of reimbursement for the Willowglen Academy to this Department.

Please submit your cost data on Illinois forms as soon as possible. The Office of Health Finance may be expected to give priority toward analyzing the data so that we in turn can notify you regarding the rate of reimbursement we can implement. The present Purchase of Services Contract will be extended by addendum for FY 79 at the current rate. After a rate for FY 79 is determined, an addendum will be issued with the new rate retroactive to July 1, 1978.

WILLOWGLEN ACADEMY

DONALD R. FRITZ, ACSW
DIRECTOR

July 20, 1979

Mrs. Rita LaLoggia
1829 Pheasant Trail
Mt. Prospect, Illinois 60056

Dear Mrs. LaLoggia:

Enclosed you will find a copy of a letter sent to the State of Illinois. The reason for this letter as stated in the enclosed is for partial or non-payment of rates due for services rendered to your child.

Very truly yours,

WILLOWGLEN ACADEMY

Michael Warcwyglowa
Assistant Director

[illegible]

Enclosure

WILLOWGLEN ACADEMY
3030 WEST HIGHLAND BOULEVARD
MILWAUKEE, WISCONSIN 53208
(414) 342 7040
(ADMINISTRATIVE OFFICES)

WILLOWGLEN ACADEMY

DONALD B. FRITZ, ACSW
DIRECTOR

June [illegible], 1978

Mr. C. [illegible] Balthasor
Manager
Division of Financial Services
Department of Mental Health & Developmental
Disabilities
General Office
[illegible] South Spring Street
Springfield, Illinois 62706

Dear Mr. Balthasor:

Your letter of June 16, 1978 in response to my letter to [illegible] [illegible] are extremely disappointing. Throughout our negotiations with various State of Illinois' personnel, carried on in good faith, we have been assured that Illinois would pay the rate of care approved by Wisconsin. You state, contrary to our understanding, that no such commitment can or will be made.

I can only assume that your policy changed recently otherwise why, previously, were we told to submit the Wisconsin rate forms and approval letter in order for your Department to approve our rate? Your previous practice is, I think you will agree, inconsistent with your presently stated position.

Your letter also does not address the question of our previous appeal and the status of monies owed to us prior to July 1, 1978. [illegible] sure that we are simply owed [illegible] - [illegible] dollars, [illegible] Mr. Anderson or his assistant did not get back to us regarding our original appeal?

We appreciate your granting us a 60 day extension to complete [illegible] [illegible], but that now appears pointless since you cannot agree to pay the Wisconsin approved rate in any case.

WILLOWGLEN ACADEMY
3030 WEST HIGHLAND BOULEVARD
MILWAUKEE, WISCONSIN 53208
(414) 342-7040
(ADMINISTRATIVE OFFICES)

In your letter, you also indicated three (3) youngsters currently in your facility no longer receive ICG funding because their parents have not cooperated in submitting required financial information. I have asked Mr. John Romoser, DMHDD monitor for your facility, to work with DMHDD staff in the community of each of the parents to help resolve this problem. DMHDD staff will be requested to call and/or visit the family and assist them in submitting the required information. Once the required information is available, the ICG will be reinstated retroactively to the date of termination.

If you have any questions, please feel free to call me.

Sincerely,

C. W.

C. W. Balthazor, Manager
Division of Financial Services

CWB:jw

cc - Richard Blanton, Ph.D
Arthur Dykstra
John Romoser
Ms. Karen Moe

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WILLOWGLEN ACADEMY

DONALD E. [illegible], ACSW
DIRECTOR

July 20, 1979

Mr. C.V. Balthazor
Manager
Division of Financial Services
General Office - Room 405
401 Spring Street
Springfield, Illinois 62706

Dear Mr. Balthazor:

We recently received a letter from your department, dated July 9, 1979, (copy enclosed), indicating that DMHDD cost forms must be submitted prior to July 31, 1979. Furthermore, you stated, disbursements for July 1979 will not be made until such forms are submitted.

As you are already aware, we received exceptions during your last fiscal year to use Wisconsin cost forms and for payment of our Wisconsin approved rate. (Refer to your letter dated July 25, 1978, copy enclosed).

We have children placed in our program from not only Illinois, but from Iowa, Minnesota, Michigan, New Jersey, and naturally Wisconsin. We realize that your department has specific guidelines it must follow, as do similar departments in each of the other states. However, our personnel and financial situations do not permit us to submit cost forms or negotiate rates, other than those set by the State of Wisconsin upon which our rate is based.

During the past several years we have had eight (8) children in our program from Illinois. In accepting these children, to date, it has cost us well over $11,000.00 in lost revenues, due to retroactive and actual costs which your department will not pay. We have each time, in viewing your position on these matters, reluctantly accepted these losses. However, it has come to the point in time where a clear decision on your part must be made. We have reviewed our total situation and feel we can no longer service Illinois children, unless the following exceptions are granted:

1. That all exceptions, for all Illinois children placed with us be in effect for the duration of their placement.

2. To pay no more or no less than the Wisconsin approved rate for all services included in that rate.

WILLOWGLEN ACADEMY
[illegible]
MILWAUKEE, WISCONSIN [illegible]
[illegible]
(ADMINISTRATIVE OFFICES)

[illegible]

[illegible], ACSW
DIRECTOR

Mr. C.W. Balthasor Page 2 July 20, 1979

3. To pay the total Wisconsin approved rate for the period of time it is in effect.

4. All Individual Care Grants authorizing payment of our rate accompany the child on placement.

5. To accept Wisconsin cost forms.

Since our acceptance of the first Illinois child in our facility, we have sustained losses because of non-payments, as stated previously. We are sure that you must understand that a condition which will add losses on to losses cannot be allowed to continue.

It hurts us to involve the welfare and future of the Illinois children, or that of any child entrusted to our care, in bureaucratic red tape. However, in order to protect the welfare of children who are not from Illinois, and in order to maintain a viable, meaningful program which can only be maintained by having a healthy fiscal condition, we must insist that payment for services rendered be received by us in a timely fashion. This payment must be that granted by the State of Wisconsin for our services. The rate for the calendar period January 1, 1979 through December 31, 1979 is $2,253.00 per month per child.

Therefore, please be informed that if payment for services rendered in the month of July are not made by August 31, 1979, all children from the State of Illinois will be discharged by September 10, 1979.

Also, prior to August 31, 1979, we must have a written answer by your department that all exceptions listed above will be accepted.

With due respect to our liaison, Mr. John Romoser, and the involved parents a copy of this letter will be sent to them.

Respectfully yours,

A.J. Palestrieri
President

AJ:rma

WILLOWGLEN ACADEMY
3030 W. HIGHLAND BLVD.
MILWAUKEE, WI 53208

July 3, 1978

Mrs. Rita Laloggia
331 Magnolia Court
Schaumburg, Illinois 60193

Dear Parents:

Enclosed is a list of all the Illinois parents names, addresses, and phone numbers. I suggest that you coordinate your efforts on behalf of all the Illinois' children placed with us. Some of you have already contacted various Illinois' officials and have been assured that this entire matter will be resolved. We sincerely hope so, although as of this writing I have not been personally contacted by anyone from DMH-DD.

Again, let me assure you that we will extend ourselves in every possible way to see that all your children remain in our treatment program. We will meet all reasonable requirements of the Illinois' DMH-DD. Some of you have been told by DMH-DD people that the issue is simple: namely, Willowglen's refusal to fill out Illinois' forms for the purpose of setting a rate. First of all this is a new requirement on Illinois' part. Initially the Department agreed to use Wisconsin cost forms, which are very extensive and are tied into our accounting system. Just to use Illinois forms would require a re-structuring of our accounting system. Furthermore, there are twenty (20) pages of Illinois forms, containing hundreds of separate items. Our accountant estimates, based on the work involved in filling out Wisconsin forms, that it would take about one month's work time for two people to complete Illinois' forms. This, clearly, is not a reasonable expectation.

Someone from the Department also stated that, if we filled out the forms, Illinois might approve a rate higher than Wisconsin approves-sounds good, but again, Wisconsin won't permit that either. The rate paid for care at Willowglen must be the rate approved by Wisconsin's fiscal office-no more-no less. That is the bottom line issue.

Some of you have asked, if this issue is not resolved by DMH-DD, whether Willowglen would permit the children to stay if the parents wished to pay the difference between the Wisconsin and Illinois approved rates. This would be agreeable to us, but it would still be unfair to you on the part of Illinois.

The department has until Monday, July 10, 1978 to respond to my letter.

I believe your attempt to get the State of Wisconsin to agree to accept a lower rate for the care of Illinois' children will be futile, since, in effect, you would be asking Wisconsin taxpayers to subsidise the care of Illinois residents.

I did, however, discuss this entire matter with my Board of Directors, and they feel your position is both unreasonable and unacceptable to them. One member pointed out the obviously arbitrary nature of your Department's policy which, when only two Illinois' children are in placement, finds our State's forms and rate authority acceptable but unacceptable if there are three or more. In terms of the bureaucracy at work, I find this simultaneously amusing and tragic because of the implicit consequences to the victims, namely the children, whose needs should be our paramount concern.

A simple solution for us, to avoid all the hassels, is to limit admissions of Illinois' children to two, regardless of the need of other psychotic and autistic Illinois' children for our specialized treatment program. The simple solution for you is, as you mention, to return Illinois funded residents to Illinois' programs, which means for most, if not all of your children here, a return to State hospitals from whence they originally came to us. I would not expect that you should know much, if anything, about our facility in terms of its uniqueness and specialized community based treatment programs. I should expect, however, that you and others in the Department will be concerned about the children——human beings with very special needs——and the negative impact upon their being uprooted again. We did not solicit the placement of Illinois children with us; quite the contrary, their parents and Illinois' personnel responsible for finding appropriate treatment for the children sought us out. Most will be hard pressed to accept the termination of their child's treatment because of an inflexible bureaucracy.

The bottom line issue then is two fold: 1. Do these Illinois children need the specialized treatment program we offer? (It is safe to assume they do, since your policies logically do not permit out-of-State placements if the child's needs can be met by programs within Illinois.) and 2. Are Illinois taxpayers, like those from other states who place children here, willing to pay the cost of our care as Wisconsin taxpayers do?

The other issues are simply bureaucratic but must be resolved: 1. Pay the approved Wisconsin rate and 2. Accept Wisconsin's cost forms and our Certified Audit as evidence of expenditures.

If a satisfactory resolution is not reached within two weeks of your receipt of this letter, I will notify the parents and responsible agents for the children of your decision. With deep regret I would be forced to discharge six of the eight children.

Sincerely,

Donald M. Frits, ACSW
Director

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c.c. Dr. Richard Blanton, Ph.D.
Mr. Arthur Dykstra
Mr. John Romoser
Ms. Karen Hoe
Mr. Robert Rose
Mr. Galen Goode
Mr. Robert Anderson
Mrs. Rita La Loggia
Mrs. Kathy Fellows
Mr. & Mrs. Richard Kemmer
Mr. & Mrs. James Mayer
Mr. & Mrs. Jon Pangborn
Mrs. Violet Wych
Mr. & Mrs. Ernest P. Woodward
Mr. & Mrs. Herbert Snorter

Certified Mail

THE BROWN SCHOOLS P O Box 4008 • Austin, Texas 78765 • (512) 478-6062

January 26, 1979

Mr. Robert Mandeville, Chairman
Governor's Purchased Care Review Board
108 State House
Springfield, Illinois 62706

Dear Mr. Mandeville,

The Brown Schools wishes to appeal the allowable costs approved by the Governor's Purchased Care Review Board for our three treatment centers. The memorandum from Joseph M. Cronin, dated January 2, 1979, states that "all applications should specify in writing the particular items on which the appeal is based." After considerable communication with the Illinois Office of Education, we are still unable to ascertain exactly how the rates for our Centers were determined. Please consider the following information as the basis for our appeal.

In March, 1978, The Brown Schools was notified of the June 1, 1978, deadline for applications for Eligibility of Nonpublic Facilities to Educate Handicapped Students under Section 14-7.02 of The School Code of Illinois. Applications were completed on The San Marcos Treatment Center, The Oaks Treatment Center, and The Ranch Treatment Center of The Brown Schools. In letters from Dr. Cronin dated July 7, 1978, all three of these Centers were notified of approval.

In a letter from Dr. Cronin dated July 3, 1978, we were notified of the July 28, 1978, deadline for Application for Interim Tuition Rates. These applications were completed and submitted. Figures submitted were from 1976-1977, the most recent period for which we had a complete audited financial statement.

In a memorandum from Dr. Cronin dated September 18, 1978, we were notified of the following interim rates:

Oaks Treatment Center:	Interim Tuition	$3,267.00
	Room and Board	$6,554.00
Ranch Treatment Center:	Interim Tuition	$2,970.00
	Room and Board	$3,740.00
San Marcos Treatment Center	Interim Tuition	$4,499.00
	Room and Board	$3,657.00

Austin and San Marcos, Texas

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According to the memorandum, the rates were established based partially on information submitted on the I.O.E. Form 33-27 in September, 1977, and partially on information submitted on I.O.E. Form 19-13 in July, 1978. When we apply the formula supplied in Dr. Cronin's memorandum to the figures submitted by us on forms 33-27 and 19-13, we can confirm only two of the six rates published by I.O.E. We can see that no reimbursement was allowed for figures we submitted under "Other charges" on I.O.E. Form 33-27. Under this category we identified costs of professional services and therapeutic supervision, which are the major costs of a residential treatment program. It appears that some facilities included these costs under "Room and Board," as I.O.E. did approve one center's room and board reimbursable cost at $45,644.50.

Our next correspondence from I.O.E. was a memorandum dated October 18, 1978, in which Dr. Cronin confirmed that many questions had been raised regarding the rate setting process. On November 2, 1978, an informational meeting was held in Chicago, which we did attend. Ms. Gail Lieberman, Ms. Jo Ann Day, and Mr. Bob Brauer provided information and responded to questions. We were informed that interim rates would not be changed, and that the Governor's Purchased Care Review Board would establish new procedures for determining reimbursable costs. It was our understanding that facilities would be provided new forms and new instructions for reporting costs so that new rates could be approved.

On January 2, 1979, we received Dr. Cronin's memorandum notifying us that the Governor's Purchased Care Review Board had set final approved reimbursable costs for each facility. The Board-approved costs for our treatment centers are exactly the same as the interim rates established in September, 1978. We are informed that we may file an appeal, but "No appeal can be acted upon unless the provider has filed an attested cost report for its fiscal year ending in the calendar year prior to the year in which the appeal is being made... The format for cost reporting will be developed by the Board and furnished to all facilities that file an appeal." We therefore assume that we will be provided instructions for cost reporting, so that we may complete the appeal process.

Since October 1st, 1978, The Brown Schools has had 16 children referred from the state of Illinois. Although school district personnel have encouraged us to admit children at the interim rate, we have informed them that we are unable to provide services at the rates established, and that we have had no assurance that I.O.E. will set an adequate rate. Several children from Illinois have been admitted under private contract with the parents.

Although we hope to continue to provide services to patients funded by the State of Illinois, we are unable to accept funding at less than our current admitting rate of $2550 per month. This rate, set by The Brown Schools' Board of Directors, is honored by OCHAMPUS, the Texas Education Agency, and many other placing agencies. We are unable to offer services to patients from the State of Illinois at a rate less than that paid by various other funding sources.

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We regret that the State of Illinois determines an approved rate on the basis of historical average cost per resident to the facility, rather than on the basis of comparing the facility's fees to the cost and quality of placement alternatives. With the rate approval procedure as it is, it is quite possible that a facility could be approved at a higher rate than that charged by The Brown Schools, with the quality of care and services provided being significantly inferior. Private agencies which have been effective in developing high quality programs while efficiently managing and controlling costs are, in fact, penalized when the reimbursement rate is based on their expenditures rather than the quality of their services.

We appreciate the State's position in the area of fiscal accountability, and encourage an even closer monitoring of the funds expended for mental health services. Although private contracting is generally utilized only when State provided services are inadequate or unavailable, we maintain that private contracting is frequently more effective and less costly. We have found in several states, including Illinois, that the actual cost of care and treatment in state hospitals is significantly greater than fees charged for services in the treatment centers in The Brown Schools.

We appreciate the opportunity to inform you of our concerns regarding the rate approval process, and to appeal the action taken by the Governor's Purchased Care Review Board. We will anticipate receiving the newly developed cost reporting format, so that we may re-submit our cost information consistent with the specifications of the Board.

Thank you for your consideration.

Sincerely,

Jean Smith

Jean Smith, M.A.
Director of Admissions

cc: Ms. Gail Lieberman, Manager, Program Administration Section, Department of Specialized Educational Services, Illinois Office of Education

Dr. Joseph Cronin, Superintendent, Illinois Office of Education

Ms. Jo Ann Day, Illinois Office of Education

Mr. Mike Schack, Director of Special Education, New Trier Township High Schools

Mr. Douglas H. Verdonck, Director of Special Education, Township High School District #211

Mr. Charles L. Aschenbrenner, Director of Special Education, Sangamon Area Special School District

THE OAKS

Residential Treatment Center of THE BROWN SCHOOLS, (512) 444-9561 P.O. Box 4008, Austin, Texas 78765

September 13, 1979

Mrs. [redacted]
[redacted]
[redacted], Illinois 60541

Re: [redacted]
File Number: [redacted]

Dear Mrs. [redacted],

On August 31, 1979, we discussed The Oaks recommendation that [redacted] be admitted to the Intensive Care Unit for a minimum of six months treatment in order to provide sufficient security to manage her severely self distructive, physically combative, and runaway behaviors. As I told you, without use of ICU, treatment cannot be adequately carried out, and [redacted] would remain a high suicide risk.

(We also discussed financial requirements for ICU treatment, which include a $40.00 per day charge in addition to the regular $85.00 per day open unit charge. It will be necessary for The Brown Schools to bill you monthly for the full fee, and, if payment is not received regularly, [redacted] can be treated only as long as there is no demand for her bed on ICU; at which time she would be discharged to you.)

As you know, this information has also been shared with your attorney, Ms. [redacted] who has stated that you plan to send us a letter stating your intent to be financially responsible for [redacted]s treatment.

[redacted] appears to have stabilized her behavior since we talked early this week. Her door is now unlocked and she has acquired a structure that allows her several periods of time each day with the other patients. I was very happy to see her motivated to regain some of her privileges and to seem to want group interaction. I'm enjoying working with her, and she is very well liked by her ICU staff.

You are going to great effort and personal sacrifice to help [redacted], and I want you to know how much I appreciate your cooperation and support; it is invaluable for the success of [redacted]'s treatment.

Do not hesitate to call me at any time.

Very truly yours,

Ann Brestrup

Ann Brestrup, ACSW
Psychiatric Social Worker

cc: Stella Schoen
Diana Lay

O

THE OAKS

Residential Treatment Center of THE BROWN SCHOOLS, (512) 444-8581 P.O. Box 4008, Austin, Texas 78765

September 17, 1979

Mrs. [redacted]
[redacted]
Naperville, Illinois 60540

RE: [redacted]

Dear Mrs [redacted]

Your letter of September 8, 1979, was most informative, and we appreciate your keeping us apprised of the situation in Illinois.

Per your request I am enclosing pertient correspondence between The Brown Schools central office, and the Governor's Purchased Care Review Board and I.O.E. Mrs. Jean Smith Director of Admissions, will be in Chicago September 20, 1979 to meet with persons representing various components of the Governor's Purchased Care Review Board. Dr. Pat Berger, DMHDD, has been instrumental in setting up this meeting.

The Oaks continues to receive numerous referrals from schools, agencies, and short term psychiatric hospitals in Illinois. Referrals, approved by I.O.E. for funding, are unable to pay our current rates even with the recent rate approval issued by the Governor's Purchased Care Rate Review Board. The small percentage of Illinois referrals who are admitted pay the medical costs (therapeutic supervision and professional fees) with assistance from insurance or with private pay. In one recent case, a juvenile court judge reportedly ruled that the court would pay these medical costs (with I.O.E. funds paying tuition and room and board.)

At your request, I forwarded a copy of your letter to Frank Rafferty, M.D., Medical Director of The Brown Schools.

I hope this information proves helpful and I would appreciate your keeping me informed of your endeavors.

Sincerely,

Diana

Diana Lay, ACSW
Coordinator of Admissions/The Oaks

enclosure

/ldc

D

THE OAKS

Residential Treatment Center of THE BROWN SCHOOLS, (512) 444-8581 P.O. Box 4008, Austin, Texas 78765

September 20, 1979

[redacted]
Naperville, Illinois 60540

[redacted]
File Number: [redacted]

Dear Mrs. [redacted]

We will be happy to provide DMHDD with copies of a social history, psychological, and psychiatric evaluation on [redacted] per your request and authorization.

(DMHDD Individual Care Grants are less than our monthly rates, and no additonal charges can be made for basic care and treatment on individuals funded through DMHDD. This means that if [redacted] is approved by DMHDD to receive an Individual Care Grant, no money from you, I.O.E., or your insurance can be used to pay the difference between our costs and the Individual Care Grant.)

Sincerely,

Diana

Diana Lay, ACSW
Coordinator of Admissions/The Oaks

/ldc

cc: Ann Brestrup

LAW OFFICES
LEONARD A. CANEL
33 NORTH DEARBORN STREET
CHICAGO, ILLINOIS 60602

LEONARD A. CANEL
ROBERT L. CANEL

AREA CODE 312
FRANKLIN 2-7000

September 1, 1979

Honorable James R. Thompson
Governor of the State of Illinois
Springfield, Illinois 62706

Dear Mr. Thompson:

We are writing this letter to bring to your attention a situation which seems to be growing daily in its magnitude. Specifically, we are referring to your Purchased Care Review Board and the difficulties it has been experiencing in: (a) properly funding placements as recommended; and, (b) expeditiously processing appeals.

As you are no doubt aware, Federal law requires that handicapped children have a right to a free, appropriate public education [20 U.S.C. §1415(6)(1)(A)]. The generally accepted and codified definition of this is that an appropriate education shall be provided to qualified children at no cost to the parents [45 C.F.R. § 121a - 4, et seq.]. Section 504 of the Rehabilitation Act of 1973 [29 U.S.C. §794,] states that handicapped children cannot be discriminated against solely on the basis of their handicap. The regulations under Section 504 also provide that such education is to be provided at no cost to parents, except for standard fees imposed on the non-handicapped [45 C.F.R. § 84.33(c)].

A recent Illinois case, interpreting the Illinois Constitution and Chapter 122 § 24-7.02 of the Illinois Revised Statutes, (the School Code) held that:

> "It is our opinion that the Legislature has established the education of handicapped students as part of the public school systems. So established, such education must be free of tuition charges for Illinois residents through the secondary level." [Willie Elliott v. Board of Education of the City of Chicago, 64 Ill. App. 3d 229, 237 (1978)]

E

At this juncture, the situation seems quite harmonious. However, Chapter 122 § 14-7.02 of the Illinois Revised Statutes, (the School Code) goes on to say in connection with children attending private schools, public out-of-state schools, or private special education facilities, that:

> "The Review Board shall review the costs for special education and related services provided by non-public schools or special education facilities and shall approve or disapprove such facilities in accordance with the rules and regulations established by it with respect to allowable costs."

The School Code goes on to say that if tuition costs exceed $4,500.00, or are greater than 10% of the previous year's costs, the excess must be approved by the Board.

Although this arrangement seems to be structured for the purpose of ensuring a fair delivery of proper services, the practical effect of the creation of the Review Board has been to delay placements that have been recommended by local districts to an extent that would have earned the praise of Machiavelli.

Mr. Thompson, it is a fact that intensive special education services, praticularly those involving such related services as room and board, are expensive. It is also a fact that the Federal Grant Act [P.L. 94-142] and Civil Rights laws [Section 504] cited above, mandate local school districts and state Boards of Education to provide a proper education at no cost to the parents; and, if the same is not provided, direct access to the Federal Courts is granted for the purpose of cutting off all Federal funding for the state involved, until a compliance is effected by that state.

We do not know if you are aware of the practice in some of the Counties outside of Cook, to seek reimbursement from the parents of Special Education students, for the excess over funds paid by the local governments for out-of-state school placements. This happens somewhat regularly when that student is also involved in the Juvenile Court of that particular county. If a placement is needed, the Judge will order the placement and have the County budget pay the excess funds, over and above what the Purchased Care Review Board has authorized. The State's Attorney then files suit against the parents for reimbursement for the charges that we believe to be the responsibility of the local School District according to Federal law. Therefore, we submit that the ambiguity and conflict between the Federal and State statutes and regulations violates the Civil Rights of many persons within the State of Illinois, and should be amended accordingly, or in the alternative, that the Review Board, an executive organ under your control, deal with the situation more adequately.

We have been informed that the legislature has not appropriated any funds with which to properly staff the Review Board. Consequently, the Board must be operated by robbing staff from other departments, causing further delays and a multitude of pending rate appeals. We have recently been involved with several cases in which the school district has agreed that a residential placement is warranted for the child, but the suggested schools -- frequently out-of-state, due to a scarcity of truly effective facilities in Illinois -- were reluctant or totally refused to deal with Illinois due to the bad experiences they have had with respect to payment for their services. Along the same vein, the rates that have been authorized for the schools are unrealistically low for the intensive and high-quality service that they deliver.

We have been informed that your office is formulating a plan whereby all state agencies can more adequately serve children who have fallen "between the cracks" of service delivery. Certainly this does not go far enough, in light of the significant damage to individuals that the present delays are causing. We have also been advised that one out-of-state school, in particular, is returning its forty Illinois children to this state by September 15th, due to the inadequate funding and cutbacks by this state. A return of forty individuals, all with serious problems, from one school alone seems in itself to work an unreasonable hardship on the parents and sending districts, as well as a possible act of discrimination against the children on the basis of handicap. Where will these children go for the services they need? Where will the children on waiting lists go for the services they need? These questions must be answered.

At this point, Mr. Patrick Murphy, the advocate for Cook County Juvenile Court has received some of the cases that fall into the scenario as stated above. His office is considering possible action against the local districts and the Illinois Office of Education, as the situation at present, is impossible and inflexible. This office as well is considering bringing a similar action unless the administrative chaos as outlined above is cleared up and the parties affected have assurances that their children will not be damaged by the action -- or inaction -- of the State of Illinois. It would seem to make common sense to spend money where it is so desperately needed, i.e. on the direct, authorized treatment of handicapped children, rather than on the legal defense of an amalgam of Federal and local lawsuits. We sincerely hope you will give this matter your earnest attention as soon as possible, and we want you to know that your staff can feel free to contact this office in an attempt to reach a solution to this serious problem.

Sincerely,

Robert L. Canel
ROBERT L. CANEL
Attorney at Law

BROOKE R. WHITTED
Attorney at Law

RLC-BRW/bc
CC: Joseph Cronin, Superintendent
Illinois Office of Education

Patrick T. Murphy
Attorney at Law

Richard J. Martwick, Superintendent
Educational Service REgion of Cook County

Bernetta Bush, Attorney
Illinois Office of Education

MAILGRAM SERVICE CENTER
MIDDLETOWN, VA. 22645

western union Mailgram

4-0071188253002 09/10/79 ICS IPMBNGZ CSP COAB
1 3128754052 MGM TDBN EVANSTON IL 09-10 0851A EST

THE COORDINATING COUNCIL FOR HANDICAPPED CHILDREN J8
407 SOUTH DEARBORN RM 680
CHICAGO IL 60605

THIS MAILGRAM IS A CONFIRMATION COPY OF THE FOLLOWING MESSAGE:

3128754052 MGM TDBN EVANSTON IL 73 09-10 0851A EST
ZIP
GOVERNOR JAMES THOMPSON
STATE CAPITOL BLDG
SPRINGFIELD IL 62706
THE CHILDRENS MENTAL HEALTH COALITION RESPECTFULLY REQUESTS A MEETING WITH YOU ON THE MORNING OF SEPTEMBER 18 TO RESOLVE:
(1) PROBLEMS CAUSED BY THE GOVERNORS PURCHASED CARE REVIEW SYSTEM OF RATING AND REIMBURSING PRIVATE RESIDENTIAL TREATMENT CENTERS FOR EMOTIONALLY DISTURBED CHILDREN AND
(2) THE PURCHASED CARE REVIEW BOARDS POLICY OF NON-REIMBURSEMENT FOR THERAPEUTIC SERVICES PROVIDED AT PRIVATE DAY AND RESIDENTIAL CENTERS FOR EMOTIONALLY DISTURBED CHILDREN

THE POLICIES AND PROCEDURES OF THE PURCHASED CARE REVIEW BOARD ARE DELAYING OR JEOPARDIZING THE TREATMENT OF HUNDREDS OF EMOTIONALLY DISTURBED CHILDREN/CHILDREN WHO ARE REHABILITATABLE IT REACHED IN TIME. PLEASE MEET WITH US TO HELP THESE CHILDREN.

I WILL CONTACT YOUR OFFICE REGARDING THE TIME AND PLACE OF THE MEETING. THANK YOU FOR YOUR CONCERN RESPECTFULLY YOURS

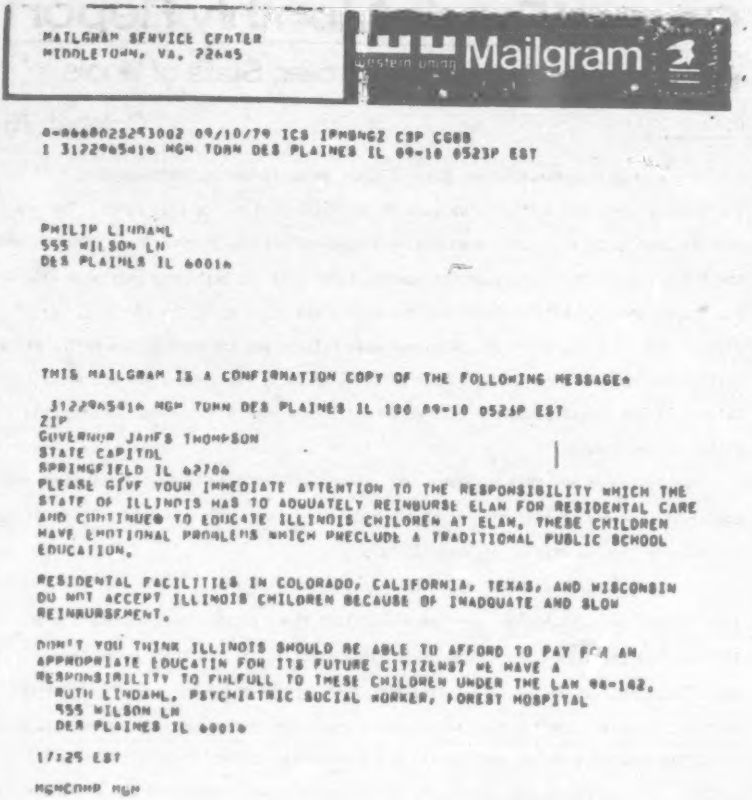
Pleased to meet!

MRS JANET SULLIVAN, MSW, CSW COORDINATOR
CHILDRENS MENTAL HEALTH COALITION
404 SOUTH DEARBORN RM 680
CHICAGO IL 60605

08:52 EST

MGMCOMP MGM

TO REPLY BY MAILGRAM SEE REVERSE SIDE FOR WESTERN UNION'S TOLL - FREE PHONE NUMBERS



MAILGRAM SERVICE CENTER
MIDDLETOWN, VA. 22645

western union Mailgram

0-0660025253002 09/10/79 ICS IPMBNGZ CSP CGBB
1 3122965416 MGM TDBN DES PLAINES IL 09-10 0523P EST

PHILIP LINDAHL
555 WILSON LN
DES PLAINES IL 60016

THIS MAILGRAM IS A CONFIRMATION COPY OF THE FOLLOWING MESSAGE:

3122965416 MGM TDBN DES PLAINES IL 100 09-10 0523P EST
ZIP
GOVERNOR JAMES THOMPSON
STATE CAPITOL
SPRINGFIELD IL 62706

PLEASE GIVE YOUR IMMEDIATE ATTENTION TO THE RESPONSIBILITY WHICH THE STATE OF ILLINOIS HAS TO ADQUATELY REIMBURSE ELAN FOR RESIDENTAL CARE AND CONTINUED TO EDUCATE ILLINOIS CHILDREN AT ELAN, THESE CHILDREN HAVE EMOTIONAL PROBLEMS WHICH PRECLUDE A TRADITIONAL PUBLIC SCHOOL EDUCATION.

RESIDENTAL FACILITIES IN COLORADO, CALIFORNIA, TEXAS, AND WISCONSIN DO NOT ACCEPT ILLINOIS CHILDREN BECAUSE OF INADQUATE AND SLOW REIMBURSEMENT.

DON'T YOU THINK ILLINOIS SHOULD BE ABLE TO AFFORD TO PAY FOR AN APPROPRIATE EDUCATIN FOR ITS FUTURE CITIZENS? WE HAVE A RESPONSIBILITY TO FULFULL TO THESE CHILDREN UNDER THE LAW 94-142.

RUTH LINDAHL, PSYCHIATRIC SOCIAL WORKER, FOREST HOSPITAL
555 WILSON LN
DES PLAINES IL 60016

17:25 EST

MGMCOMP MGM

General Funds Monthly Report

Roland W. Burris, Comptroller, State of Illinois

October '79

The available balance in the General Funds on September 30, 1979 was $575 million - the highest month end available balance in the history of the General Funds. The previous high was set on July 31, 1979 when the available balance was $552 million. This is only the fifth time in the history of the General Funds that the month end available balance has topped the $500 million level and three of these occurred in the first quarter of fiscal 1980. The September 30, 1979 available balance was inflated by the influx of $40 million in receipts from the corporate personal property replacement tax - the available balance at the end of September 1979 would still have been $535 million without this influx of new revenues.

The September 30, 1979 available balance was $373 million higher or 2.8 times the comparable balance of $202 million at the end of September 1978 and $185 million above the balance of $390 million on June 30, 1979.

Total General Funds revenues in the first quarter of fiscal 1980 were $1.813 billion, $192 million or 11.8% higher than the fiscal 1979 first quarter record. The increase of $105 million (21.3%) in the income taxes (including $38 million from the replacement tax) and $75 million (14.4%) in sales taxes accounted for the major portion of this first quarter increase. Additional increases of $17 million from investment income, $13 million from federal sources, and $10 million from public utility taxes (including $2 million from the replacement tax) were in part offset by decreases of $20 million in the inheritance tax and $11 million in transfers in.

Total expenditures from the General Funds in the first quarter of fiscal 1980 were $1.628 billion, $123 million or 8.2% above first quarter spending in fiscal 1979. A $58 million (40.8%) increase in spending for all other grants and a $31 million (7.6%) increase in spending for operations accounted for most of this increase in first quarter spending over last year's comparable record. There were also increases of $14 million, $12 million, and $10 million for public aid grants, refunds, and transfers out.

NEWS
From Roland W. Burris, Comptroller, State of Illinois

FOR IMMEDIATE RELEASE

Further Information:
Bill Foster (217) 782-6000

STATE'S GENERAL FUNDS HIT ANOTHER RECORD HIGH, CLIMB TO $575 MILLION DESPITE SCHOOL PAYMENTS

SPRINGFIELD, Oct. 3, 1979 -- The State's "checkbook" balance in the General Funds has set another all-time end-of-the-month record, rising to $575 million on September 30, Comptroller Roland W. Burris reported today.

Comptroller Burris noted that the available balance hit the new record high even though the State made two major school aid payments -- totalling $118,254,995 -- during the same month and, at the same time, completed payment of "lapse period" bills left over from the last fiscal year. Burris said the new record balance was aided in part by the inflow of $40 million in receipts from the corporate personal property replacement tax.

The previous month-end record was set on July 31, 1979, when the available balance was $552 million. The new September record is only the fifth time in the history of the General Funds that the month-end available balance topped the half-billion dollar level.

For perspective, the new record balance of $575 million is almost triple the balance just one year ago, when the September month-end figure was $202 million, and the new figure is $185 million higher than the balance of $390 million when the State ended its last fiscal year on June 30, just three months ago.

A detailed report is attached.

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F

State of Illinois

GENERAL FUNDS TRANSACTIONS

(millions)

	September 1978	September 1979	Amount of Change	Three Months FY 1979	Three Months FY 1980	Change Amount	Change Percent
Available Balance Beginning	$ 247	$ 544	$ +297	$ 86	$ 390	$ +304	
REVENUES:							
State Sources:							
Cash Receipts:							
Income Taxes (gross)							
Regular	$ 206	$ 234	$ +28	$ 492	$ 559	+67	+13.6%
Replacement	...	38	+38	.....	38	+38	.....
Total	(206)	(272)	(+66)	(492)	(597)	(+105)	(+21.3)
Sales Taxes	160	175	+15	522	597	+75	+14.4
Other Sources:							
Public Utility Taxes							
Regular	30	33	+3	90	98	+8	+8.9
Replacement	...	2	+2	.....	2	+2	.....
Total	(30)	(35)	(+5)	(90)	(100)	(+10)	(+11.1)
Inheritance Tax (gross)	15	10	-5	49	29	-20	-40.8
Investment Income	7	12	+5	19	36	+17	+89.5
All Other	48	48	...	133	136	+3	+2.3
Total, Other Sources	(100)	(105)	(+5)	(291)	(301)	(+10)	(+3.4)
Total, Cash Receipts	$ 466	$ 552	$ +86	$ 1,305	$ 1,495	$ +190	+14.6%
Transfers In	10	4	-6	28	17	-11	-39.3
Total, State Sources	$ 476	$ 556	$ +80	$ 1,333	$ 1,512	$ +179	+13.4%
Federal Sources	73	67	-6	288	301	+13	+4.5
TOTAL, REVENUES	$ 549	$ 623	$ +74	$ 1,621	$ 1,813	$ +192	+11.8%
EXPENDITURES:							
Warrants Issued:							
Operations	$ 162	$ 155	$ -7	$ 410	$ 441	$ +31	+7.6%
Awards and Grants:							
Public Aid	168	158	-10	492	506	+14	+2.8
Common School Fund	135	140	+5	280	280	.....	.....
All Other	62	84	+22	142	200	+58	+40.8
Total, Awards and Grants	(365)	(382)	(+17)	(914)	(986)	(+72)	(+7.9)
Refunds	9	8	-1	26	38	+12	+46.2
IBA Rentals	28	15	-13	40	38	-2	-5.0
Permanent Improvements	1	1	...	1	1	...	.....
Total, Warrants Issued	$ 565	$ 561	$ -4	$ 1,391	$ 1,504	$ +113	+8.1%
Transfers Out	29	31	+2	114	124	+10	+8.8
TOTAL, EXPENDITURES	$ 594	$ 592	$ -2	$ 1,505	$ 1,628	$ +123	+8.2%
Available Balance Ending (September 30)	$ 202	$ 575	$ +373	$ 202	$ 575	$ +373	

SPRINGFIELD OFFICE
STATE CAPITOL BUILDING
SPRINGFIELD, ILLINOIS [illegible]
PHONE 217/[illegible]

LEGISLATIVE SERVICE OFFICE
[illegible] MAIN STREET
EVANSTON, ILLINOIS [illegible]
PHONE 312/[illegible]

CHICAGO OFFICE
[illegible] WEST WASHINGTON STREET
SUITE [illegible]
CHICAGO, ILLINOIS [illegible]
PHONE 312/[illegible]

ARTHUR L. BERMAN
SENATOR
11TH LEGISLATIVE DISTRICT

CHAIRMAN • ELEMENTARY AND SECONDARY EDUCATION COMMITTEE
VICE CHAIRMAN • SCHOOL PROBLEMS COMMISSION
MEMBER
INSURANCE AND LICENSED ACTIVITIES COMMITTEE
JUDICIARY II COMMITTEE
TRANSPORTATION COMMITTEE
COMPACT ON EDUCATION COMMITTEE
ADVISORY COUNCIL ON AGING
COUNCIL ON NUTRITION
COMMISSION ON CHILDREN
JOINT COMMITTEE ON ADMINISTRATIVE RULES

G

COPY

October 9, 1979

Edwin W. Martin
Deputy Commissioner
Bureau of Education
for the Handicapped
Department of Health,
Education & Welfare
Office of Education
Washington, D.C. 20202

Dear Commissioner Martin:

Althouth the implementation process of PL 94-142 is primarily a state/local issue, we need federal clarification and perhaps intervention on several points.

In Illinois statutes, there exists a rate-reviewing mechanism called the Governor's PurchasedCare Review Board. The responsibility of this board is to set allowable costs for private residential and day school facilities serving handicapped children. The major problem is in the definition and interpretation of "allowable" costs, and this problem has caused a great deal of concern for all parties involved.

There are three major issues, all inter-related, that we feel your office should address. Those issues are: 1) the definition of "allowable" costs for related services, 2) the question of parent financial participation, and 3) conflicting code language in PL 94-142 and Titles XIX and XX.

In the first issue, that of determination of allowable costs for related services, section 121 a.13 states that counseling and parent counseling and training could be considered a related service.

C

The language in the regs does not say that therapy, psychotherapy, psychiatric counseling, ongoing medical services, glasses, hearing aids, prosthetic devices and so forth could be allowed. The footnote attached to 121 a.13 in the comment section would seem to allow such costs, but can easily be interpreted from a different perspective.

The Governor's Purchased Care Review Board in Illinois strictly adheres to the language cited in the body of 121 a.13 in allowing costs for related services, and disregards the comment section that uses the word "may". It appears that the intent of PL 94-142 is to be all inclusive; however, lack of clarity within the body of this particular section allows for varying interpretations.

Therein lies the problem. The rulings made depend on the perspective of the rule-maker; and the language, as stated, can be open to a particular point of view and interpretation.

I am asking the Bureau of Education for the Handicapped for either all-inclusive language specifying detailed related services allowed, or for a general "linking" statement saying that anything outlined in the individual child's IEP should be allowed. *

I do not know how other states are dealing with the particular problem, but I am well aware that in Illinois, it has become a serious concern.

I understand that changes in the regs or in the act itself are not advisable at this time; but perhaps a general order from the Bureau of Education for the Handicapped to the states would alleviate some of the problems we are experiencing.

In the second issue, that of parent's financial participation in total costs, the regs say in 121 a.401, that responsibility shall lie with the SEA at "no cost to parents". The Illinois Governor's Purchased Care Review Board has recently promulgated a rule that requires parent financial participation for "non-allowed costs". As a side issue, thre is no provision within that rule providing for those parents who are unable to participate; but whose children must be placed, according to the IEP, in a specific facility offering specific services.

G

Once again, the question of "allowable" costs arises, and once again, the interpretation is not clear. The Governor's Purchased Care Review Board has chosen to use its own understanding of the regs in requiring parent financial participation.

In regulation 121 a.302, the public agency is required to pay for non medical care, tuition, and room and board; leaving the impression that parents can pay towards medical costs. Is there a conflict? Or is this particular language open to interpretation? Again, is the intent of PL 94-142 being followed? Clarification and specific comments from your office on this particular issue is desirable.

The third issue is that of conflicting statutory language in Titles XIX and XX and PL 94-142. Federal language is XIX and XX, according to Illinois interpretation, require some parental financial participation, but 94-142 says "at no cost to parents". Which Federal language takes precedence?

The Governor's Purchased Care Review Board has chosen to interpret that parent financial participation is allowed in 94-142, as stated in Illinois' interpretation of Titles XIX and XX. Their viewpoint again relates to the question of "allowable costs" for related services.

And again, is the intent of 94-142 being followed, and what interpretation will the Bureau of Education of the Handicapped recognize?

A fourth issue emerging is one of third party payments, specifically from insurance companies who may drop clients because of the demands in 94-142. This issue will soon become a major one across the country, and your comments on the subject are welcome.

The Department of Specialized Educational Services of the State Board of Education concurs with me in bringing these problems to your attention.

Your response would be appreciated as soon as possible.

Sincerely,

ARTHUR L. BERMAN

ALB/lcs

P.S.
I am enclosing a copy of a letter from an Illinois citizen, which is typical and articulates her problems regarding her child.

H

Beacon Therapeutic School
DIAGNOSTIC AND PRESCRIPTIVE LEARNING CENTER
10010 South Longwood Drive
Chicago, Illinois 60643
881-1005

F

August 14, 1979

ear Parents:

t is necessary for us to inform you of a change in the financial arrangements for e coming year. It has been brought to our attention that while 94-142 provides r a "free appropriate education," it is still a requisite from the Department of ntal Health and from the Governors Regulation from the Rate Review Board Rule 3.31, art I,

> "To the extent that no other state agency has responsibilities for these costs, parents or other responsibile parties will be assumed to have accepted responsibility for these costs."

at we have a sliding fee scale (in our case for "therapeutic services"). These are nclusive of but not limited to the following: 1.) development and implementation f the student's program in an appropriate therapeutic milieu; 2.) individual iagnostic assessment of child and adult for appropriate intervention; 3.) psychoogical testing; 4.) psychiatric and psychological consultation; 5.) treatment as etermined appropriate for child and adult.

he sliding fee scale will be based on a figure of $1,200 for the 12-month year. f you wish to be considered on the fee scale, it will be necessary for you to ring to registration a copy of last years tax return. If you do not, then half he fee should be paid at registration with the remainder due by January 31, 1980.

f you have any questions regarding this change, please call us at school or r. Patricia Barger, Statewide Coordinator, Children & Adolescent Services, 793-3785.

Sincerely,

rrell Schlange, President
acon Board of Directors

John J. Russell
Accountant

Margaret M. Morley
Director

c: Board of Directors
School Districts

H

TESTIMONY OF LEO V. ZAYAUSKAS TO THE GOVERNOR'S PURCHASED CARE REVIEW BOARD ON OCTOBER 2, 1979:

I am a Beacon Therapeutic School Parent, and Chairman of the Investigative Committee concerned with Public Law 94-124 Non-Compliance formed because we're being charged for therapeutic services.

By using our son Christian as an example, I wish to relate some facts that I believe are true of MOST Emotionally Disturbed and Learning Disabled Children.

First and foremost, EDUCATION IS IMPOSSIBLE WITHOUT THERAPY! Chris' progress with therapy has unlocked potentials we didn't dare to dream of prior to therapy. Beacon's excellent results are rooted in excellent therapy, and it is as necessary as Braille for the blind! The State's statutory obligation to educate my son is pure pretense without this required therapy! It is discrimination to deny him therapy while providing for the requirements of children with other handicaps.

While Chris' potential to become a productive adult now shows hope, I shudder to recall his prognosis without therapy! The educational process would be meaningless, and peer abuse would follow him through life as would the need for other State Support. Ignoring the "seed money" now, to "bend the twig" would result in a lifetime drain on society and its funds.

The opening pages of Pulic Law 94-142 clearly states that it is in the National Interest to find and provide for the unique needs of these children at no cost to parents or guardians.

The spector of residential care costs hovers over ALL parents of emotionally disturbed children. Therefore, Public Law 94-142 is extremely important to all of us!

H

Today, in Illinois, the hopes and promises of Pulic Law 94-142 are being crushed by extending the parental vulnerability aspects of Title 19 and Title 20 over therapeutic services. Title 19 and Title 20 are Executive Department Guidelines, NOT Legislated Laws, yet they bring several thousand times more money to our Department of Mental Health than does Public Law 94-142. This has influenced the BBard.

Parents are placed between two positions wherein they must violate one to satisfy the other. If we hold to Public Law 94-142 and don't pay, we violate Title 19 and 20, and the Purchased Care Review Board's Ruling. Conversely, we're told to violate the hopes of Public Law 94-142, pay for therapy, and accept being discriminated against.

I beseech the Board to recognise the progress, and long term, human and economic savings to be realized with therapeutic services for our children. And, with this recognition, end discrimination by reversing your battle lines. Please join parents in the effort to free funds for therapeutic services from the public sector in accordance with Public Law 94-142.

While I don't believe that public funds are exhaustible, I do believe that non-compliance can end them. After presenting the Board with so many funding problems, I wish to suggest a a method to maximize the use of therapeutic funds.

In 1976-77, Dr. Desai's "Program Evaluation Task Force of the MI Centers of Chicago" determined that the cost effectiveness of therapy verses results varied greatly among the 18 Centers. Yet today, DMH has no cost effectiveness model to apply to funding requests. The Staff and Parents of Beacon Therapeutic School are proud of Beacon's standing in such studies, and therefore, feel eminently qualified to become a study model! Provide us with the required therapeutic services funds, then scrutinize our results and cost effectivness. The data achieved could realistically clarify and standardize future funding to minimize waste while maximizing successful rehabilitation.

Thank you,

I

Niles Township Department of Special Education
6950 East Prairie Road
Lincolnwood, Illinois 60645
(312) 675-8625

To: Ms. Jo Ann Day
Chairman
Governor's Purchased Care Review Board
100 North First Street
Springfield, Illinois 62777

From: Gary
Gary Hahn
Director, Secondary Program

Date: September 19, 1979

Subject: Actions of the Governor's Purchased Care Review Board Relative to Private Residential Facilities Approved to Serve Emotionally/Behaviorally Handicapped High School Children

I do not fancy myself doing battle with windmills, but I certainly do wish to serve "the people I am supposed to be serving". (EXHIBIT A)

I have to date addressed my concerns relative to the actions of the Review Board to the State Board of Education (IOE). In retrospect, I believe the State Board has been asked to explain, justify or seek solutions to problems more related to the activities of the Review Board than to the activities of the State Board. I am, therefore, directing to the Review Board questions relative to their functioning which I believe need answers. (EXHIBITS B, C) I enclose for your reference related concerns which are more appropriately directed to the State Board. (EXHIBITS D, E, F, G)

Parents and private facilities are continually asking me if the Rate Review Board is functioning with integrity – about the business of setting fair rates for private facilities in compliance with State and Federal laws and regulations. The issue is trust.

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I believe it is most important that the Review Board be trusted as a group of hard working men and women who are functioning in good faith on behalf of handicapped children. There is suspicion that a priority to hold down State expenditures might be interfering with that good faith effort. Private facilities question the legality of Review Board decisions. (EXHIBIT H) Parents feel trapped between a rock and a hard place when they are told to file an Impartial Due Process Appeal on matters relative to the Review Board which, in fact, cannot be addressed by such an appeal. PARENTS HAVE NO RIGHT OF APPEAL RELATIVE TO THE REVIEW BOARD! (EXHIBITS I, J)

My purpose here, therefore, is twofold.

1. I would appreciate receiving legal and/or philosophical answers to a list of questions relative to Review Board rules and positions.
2. I wish to share with the Review Board my analysis of the number and nature of that one group of private residential facilities that at this point in time can be utilized by the L.E.A. to serve emotionally/behaviorally handicapped high school age children. (EXHIBIT G) I do so because I believe the net result of the Review Board actions - the "fruits of their labors" - must be translated in terms of what schools are available to serve these children.

Questions that Need Answers

1. How can social services be non-educational? (EXHIBIT K, lines 4, 5)
2. How can social services which are primarily therapeutic be not purchased for children who require such therapeutic related service in order to be successful in an academic program? (EXHIBIT K, lines 5-8; EXHIBIT L, lines 9, 10)
3. How can direct contact by a licensed psychologist (who happens to not be certified as a school psychologist) be not approved as a related service for children who require psychological services? (EXHIBIT K, lines 11-16; EXHIBIT L, lines 17-20)
4. What do lines 23-26, EXHIBIT K, mean?
5. If a child's I.E.P. states that the child requires more childcare worker time than approved for purchase by the Review Board, should not the facility be allowed a higher L.E.A. tuition payment for that child? (EXHIBIT K, lines 27-32; EXHIBIT L, line 33)

6. Why must related services at a residential facility serving emotionally/behaviorally handicapped children take place prior to 3:00 P.M. on school days? How about weekends? (EXHIBIT M, lines 20, 21)

7. How can these related services approved by the State Board be accomplished prior to 3:00 P.M.? Does the Review Board disallow any of those listed services? (EXHIBIT R)

8. When the State does not provide a necessary residential program and, therefore, chooses to purchase that program from a private enterprise, how can the State tell that enterprise that profit or any portion of profits or other non-medical costs will be disallowed? (EXHIBIT M, lines 27-31; EXHIBIT N, lines 18, 19)

A comparison. It is my understanding that when the State accepts a bid to "fill the pot-holes", the State does not tell that enterprise where to buy their trucks and gravel- nor how much, if any, profit the company can make.

9. During the 1978-79 school year, the State took the position that the net effect of a private placement must not cause the family to pay for other than medical service and incidentals. In fact, even third party payments had to be applied to the State approved rates. (EXHIBITS O, P, Q)

I understood that position: To allow payment from families would discriminate against those handicapped children whose parents could not or would not come up with the money necessary for any appropriate private facility to accept the child.

How are the child's rights protected where the parents will have to pay? (EXHIBITS C, D, E)

Private Residential Facilities Approved by the State to Serve Emotionally/Behaviorally Handicapped High School Children

There are twenty-seven such facilities. (EXHIBIT G)

Sixteen of these facilities have Review Board tuition and room/board rates.

Eight of the sixteen facilities have rates where either the facility will accept the Illinois rates without a charge or with a small additional charge to the parents.

Six of these eight facilities have openings. My investigation of these eight facilities suggests the following.

1. St. Mary's has limited capacity to control and treat sick and/or acting out high school girls. None of my unplaced girls are acceptable to St. Mary's.

2. DeNeuville Heights has rejected Sharon and Michelle because "we don't have psychological staff on duty during the day." Debbie will be reconsidered due to my pleadings.

3. The L.D. Institute is unable to control behavior problems except by use of medication. Enough said.

4. Presently, that leaves the L.E.A. with three "FAPE" facilities in the United States: Elan One, the Chaddock School for Boys, and the Lawrence Hall School for Boys. "The word is still out" on the four cases referred to Chaddock and Lawrence Hall.

5. Elan One is inappropriate for fragile, borderline, psychotic or schizophrenic children. For others, a most outstanding program.

6. Hopefully, Michael, Neil, Nick, David, Deena and Kathy will be taken by Elan One.

7. Shortly, Chaddock and Lawrence Hall will let me know if they will accept David, Scott, Troy and Glenn.

8. George, Ken, Sharon, Debbie and Michelle have no place to go right now. George has received a D.M.H. individual care grant but there will probably be no money until Spring. Of course, he will be eighteen then so he won't get the money anyway. Michelle may get such a grant shortly, and assuming D.M.H. and their private facilities can agree on contracted rates, she may be placed- probably with the single mother having to come up with a chunk of money. Again no "FAPE". I worry a lot about these five children- their case studies are "chilling".

9. I understand that the Larkin Home for Children also has another facility for children like George, Ken, Sharon and Michelle which the Review Board considered too expensive for use by the L.E.A., but okay for D.M.H. who has a contract for approximately $44,000 a year per child (our D.M.H. Subregion 8 is unable to accept new cases for grant payment until Spring 1980.)

10. $44,000. The Brown Schools, Bellefaire, the Devereux Schools, Secret Harbor, Hillside and CEDU charge a lot less than that and they still make a profit.

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Conclusion

The Review Board and/or B.E.E. are charged with determining the conclusion of this situation.

I offer, however, a concluding concern. The Larkin facility "hidden" from the L.E.A. but approved by D.M.H. for $44,000, the expensive prison system and, yes, the State contracts with profit-making companies who "fill the pot-holes" suggest that costs may not be the only consideration among any persons who may resist setting higher rates for these facilities. I hope I am wrong, but in case I am right, I wish to appeal to all parties involved in the setting of rates to affirm to one another the following facts.

1. Emotionally/Behaviorally Handicapped children are not genetically weak misfits undeserving of help.
2. These children are not spoiled, affluent north suburban "sinners" undeserving of help.
3. The fact that we or ours or our friends or relatives in years past did not receive a free, appropriate service delivery as children to help them cope with family pain - and survive or not survive - should not mean that today's children should be denied help.

EXHIBITS

A. Letter to G. Hahn (C. Bostian), 9/5/79

B. Letter to G. Lieberman (G.Hahn), 9/10/79

C. Letter to G. Hahn (G.Lieberman), 9/5/79

D. Memorandum to G. Lieberman (G.Hahn), 9/19/79

E. Memorandum to Dir. of Spec. Ed. (J.Cronin), 9/17/79

F. NONPUBLIC FACILITY PLACEMENT CONTRACT (ION 15-83), 5/79

G. PRIVATE FACILITY RATES (G.Hahn), 9/19/79

H. Letter to G. Hahn (Riverview School), 9/13/79

I. Letter to J. Vlasak (V.Frazee), 9/18/79

J. Administrative Order Number SE-34-79 (J.Cronin), 9/12/79

K. GOVERNOR'S PURCHASED CARE REVIEW BOARD, INSTRUCTIONS FOR COMPLETING THE FISCAL AND STATISTICAL REPORT FOR NONPUBLIC SCHOOLS, pages 22, 23

L. REVIEW BOARD INSTRUCTIONS, page 24

M. ILLINOIS REGISTER, 6/1/79, pages 160, 161

N. ILLINOIS REGISTER, 7/20/79, page 204

O. Letter to G. Hahn (G.Lieberman), 4/18/79

P. Letter to parent (M.DeSisto) with copy to J. Fisher, 12/11/78

Q. Letter to J. Fisher (G.Hahn), 11/28/78

R. Instructions for completing "FACTS" (IOE 34-30): Item 13 Related Services, page 8, 5/79

I also enclose materials on this subject previously distributed to the State Board of Education, parents and private facilities.

Memorandum to Parents and Private Facilities (G.Hahn), 8/29/79
Memorandum to J. Fisher (G.Hahn), 8/29/79
Private Residential Facility Placement Status Report (G.Hahn), 8/29/79
"To Whom It May Concern" (G.Davidson), 8/22/79

GH/bs
Encs.
Copies: Parents of District 219 Children Approved for Private Residential Facility Placement
Private Residential Facilities
The Niles Township Committee for Special Education
Niles Township School Superintendents
Dr. Ashline
Dr. Blodgett
Mr. Bostian
Ms. Bush
Dr. Cronin
Dr. Fisher
Mrs. Lieberman
Dr. Martin
Ms. Schmitt
Dr. Vlasak
Congressman Mikva
Congressman Simon
Senator Berman
Representative Hoffman
District 219 Principals
District 219 Student Services Directors
Dr. Frazee

EXHIBIT A

STATE OF ILLINOIS
EXECUTIVE OFFICE OF THE GOVERNOR
BUREAU OF THE BUDGET
SPRINGFIELD 62706

September 5, 1979

Mr. Gary Hahn
Director, Secondary Program
Township Department of Special Education
6950 East Prairie Road
Lincolnwood, Illinois 60645

Dear Mr. Hahn:

I regret your preoccupation with the dispensation of misinformation. You are doing a great disservice to the people you are supposed to be serving.

Sincerely,

J Calvin Bostian
J. Calvin Bostian
Counsel

JCB:nb

EXHIBIT B I

Niles Township Department of Special Education
6950 East Prairie Road
Lincolnwood, Illinois 60645
(312) 675-8625

September 10, 1979

Mrs. Gail Lieberman
Manager, Approval Section
State Board of Education
Illinois Office of Education
100 North First Street
Springfield, Illinois 62777

Dear Gail:

I am responding to your letter to me dated September 5, 1979.

First, my August 29 memorandum to Joe Fisher and the materials that accompanied that memorandum did not contain "accusatory statements" (line 76). I believe those communications, however, did articulate questions that need answers. Further, I did not send those memorandums and statements to B.E.H. (lines 76-77). I assume, therefore, that you may be referring to Dr. Frasee's letter to Dr. Vlasak.

Second, you mention (line 30) that only five appeals of the 1978-79 rates remain to be finalized. I am concerned with the 1979-80 rates.

Third, I shall follow your instruction to direct concerns and questions relative to the Governor's Purchased Care Review Board to the chairman of that body, Ms. Jo Ann Day. I shall provide you with a courtesy copy of my correspondence with Ms. Day.

My professional and personal regards.

Very truly yours,

Gary

Gary Nahn
Director, Secondary Program

GH/bs
Copies: Jo Ann Day
Joseph M. Cronin
Nelson F. Ashline
Joseph E. Fisher
Vernon Frasee
Don Bldgett
[illegible] COUNTY DISTRICTS 67. 68. 69. 70. 71. 72. 73. 73½. 74. 219.

STATE BOARD OF EDUCATION
ILLINOIS OFFICE OF EDUCATION

Donald F. Muirheid, Chairman
State Board of Education

Joseph M. Cronin
State Superintendent of Education

EXHIBIT C

September 5, 1979

Mr. Gary Hahn
Director, Secondary Program
Niles Township Department
of Special Education
6930 East Prairie Road
Lincolnwood, Illinois 60645

Dear Gary:

Joe Fisher received your memorandum of August 29. He has asked me to reply. Your opening statement that you are "referring" fifteen children to the Illinois Office of Education is acknowledged but of little value for placement purposes. One can always request technical assistance from this office, but the ultimate responsibility for placing all students rests with the local educational agency. I am sure the local superintendents in your area are not ready to give up their local control to us regarding student placement.

The first seven (7) students you list as being accepted at Elan One will cease to be a problem to you if: 1) current discussions being conducted between this office and Elan One are successful; and 2) contracts are signed designating who pays for what. As long as parents are not paying for special education and related services or room and board, they may pay for certain costs (i.e., ongoing medical costs, common fees such as for texts, etc.). For those remaining eight (8) students listed in your letter of August 29, 1979, as well as for the first seven (7), you do not mention seeking any alternate placements. In fact, you give no useful information on the remaining eight (8) students at all. With none, we cannot offer technical assistance or any aid at this time.

As for the "reasons" you state on page 2 of that memorandum, for which the local educational agency is unable to provide programs for those students, I acknowledge #1. Number 2 is valid for the Illinois Office of Education. Number 3 is perhaps true; however, that is a legal interpretation, not a program one. You might discuss it with legal staff of the Illinois Office of Education. At least one inventive district is implementing such a program, cooperatively, at present. As to number 4, the Governor's Purchased Care Review Board has approved rates for dozens of facilities for both tuition and room and board, those having been accepted by those facilities without appeals. Of the 89 appealed rates for 1978-79, only five remain to be finalized. We await cost information from the provider.

I must also comment on your enclosures. In your memorandum of August 29 to "Parents and Private Facilities", your remarks are mostly erroneous. First, districts in Illinois were authorized to pay both tuition and room and board to private facilities, if fees charged by those facilities to parents were shown to be for items not allowed on the approved rates. Second, in the letter in the spring to Dr. Frazee from the Governor's Purchased Care Review Board, and earlier by telephone, you were informed that parents could pay the difference between the Illinois allowable cost and the facility charge. This statement was specific to a child placed by your district in Menninger Foundation but was easily generalized to other students.

Some of your questions in remark number 3 were addressed in the financial form and instructions sent out by the Governor's Purchased Care Review Board. Copies were mailed to all directors of special education. I suggest you obtain a copy from Dr. Frazee and read it to answer several subpoints. If you still have specific questions, do call Jo Ann Day, Interim Executive Director of the Governor's Purchased Care Review Board, at 217/782-6601.

You questioned whether facilities were doing a poor job of accurately completing the forms. Any new form of any length entails a need for training and technical assistance, as well as some margin of error. However, this office has offered both inservice sessions and technical assistance on the forms. The facilities appear to be able, in aggregate, to accurately complete them.

You also questioned why other states are paying the full private facility rates and Illinois is not. Illinois personnel feels that it should be accountable for the services for which it pays. We are accepting rates set by a state in which a facility is located if that state has a rate-setting commission or similar entity and there are five or fewer Illinois students attending that facility. To do less than this would seem to be abrogating our responsibilities to both the students and the taxpayers of Illinois.

I must also remark on the summary in your paper entitled Private Residential Status Report. It appears erroneous to state that parents of those 25 students are paying "school" costs. Parents are paying, if necessary, for "non-school", or at least "non-education" and "non-room and board costs". The allowable costs set by the Governor's Purchased Care Review Board are designated to cover all allowable special education and related services costs and room and board. No protest was heard on these specific rules, in their proposed status, on this topic. Those items, excluded from the definition of "special education and related services..." are excluded from allowable costs, i.e., ongoing medical costs. This should have been made clear. Your further statement that a district has not been given "option"

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to appropriately place children in residential facilities is totally correct! Districts are given the mandate to appropriately place all students! Your accusatory statements and unclear language in letters, to the Bureau of Education for the Handicapped or the Illinois Office of Education, are sent to this shop for reply. If you have concerns the Illinois Office of Education can address, i.e. technical assistance, do call me. If you have any questions about setting allowable costs, please contact the Chairman and/or the Director of the Governor's Purchased Care Review Board.

Sincerely,

Gail Lieberman

Gail Lieberman (Mrs.)
Manager
Approval Section

cc: Joseph M. Cronin
Nelson F. Ashline
Joseph E. Fisher
Vernon Frazee
Don Blodgett
Wes Gibbs

EXHIBIT D

Niles Township Department of Special Education

6950 East Prairie Road
Lincolnwood, Illinois 60645
(312) 675-8625

To: Mrs. Gail Lieberman
Manager, Approval Section
State Board of Education
Illinois Office of Education
100 North First Street
Springfield, Illinois 62777

From: Gary Kahn
Director, Secondary Program

Date: September 19, 1979

Subject: Request For Technical Assistance

The NONPUBLIC FACILITY PLACEMENT CONTRACT, I.O.E. 19-83, 5/79 (enclosed) states that third party payments must be deducted from the Illinois approved tuition and room/board rates. Dr. Joseph Cronin's memorandum, dated 8/17/79 (enclosed), states: "Any other expenses not noted on these listings, i.e., ongoing medical services, are the responsibility of the parents or a third party payor." It is my understanding from your letter to me, dated 9/5/79 (enclosed), lines 12-15, that parents can be asked to pay not only medical costs (hopefully via medical insurance), but that they can also be asked to pay "etc." Lines 38-39 of your letter appear to define "etc.": "...that parents could pay the difference between the Illinois allowable cost and the private facility charge" - be such costs medical charges or nonmedical charges.

Please advise: Is not IOE contract form 19-83 in contradiction with Dr. Cronin's memorandum of 8/17/79 and your letter of 9/5/79? Who can pay specifically what? Do we need a new contract "yesterday"?

I understand that the per diem tuition rate for a private facility may be multiplied times a maximum 185 days of school, plus a maximum 1/5 of the regular school year tuition payments for the summer for a total twelve month tuition payment to a private facility. I also understand that the room/board per diem rate may be multiplied times a maximum 304 days, plus a maximum 1/5 of the regular school year room/board payment for the summer for a total twelve month room/board payment to a private facility.

Please advise: Are the above two formulas correct? May days be counted for tuition when a child is sick or refuses to attend school or accept related services? Can teacher institute days and legal holidays be counted as payable tuition days and/or room and board days?

I enclose a list of all private residential facilities in the United States approved by I.O.E. as serving emotionally disordered high school age children where a retarded population is not included in that population. This list does not include several facilities noted in the IOE approved list as serving B.D. children, because my investigation indicates that these additional facilities will not tolerate inappropriate behavior. Such facilities may be characterized as serving that population portrayed by Spencer Tracy, "He aint heavy, fodder, he's my brodder" - good boys and girls who simply need a few kindly adults to get them on the right track. School District 219 can and does appropriately serve such children.

Please advise: Have I missed any facilities? Are any of my estimations of the actual costs of those facilities listed incorrect?

GH/bs
Encs.
Copies: Vern Frazee
Wesley Gibbs
Jo Ann Day
Joseph Cronin
Nelson Ashline
Joseph Fisher
Don Blodgett

STATE BOARD OF EDUCATION
ILLINOIS OFFICE OF EDUCATION

Jack Witkowsky, Chairman
State Board of Education

Joseph M. Cronin
State Superintendent of Education

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DATE: August 17, 1979

MEMORANDUM

EXHIBIT E

TO: Directors of Special Education
Regional Superintendents

FROM: Joseph M. Cronin
State Superintendent of Education

SUBJECT: 1979-80 School Year Allowable Costs for Private School Placements

On August 17, 1979, the Governor's Purchased Care Review Board reviewed costs for the 1979-80 regular school term for eligible nonpublic special education facilities pursuant to Section 14-7.02 of The School Code of Illinois. Those facilities under their auspices with a complete cost report for 1979-80 on file have had an allowable cost set. Day facilities with an educational cost less than $4500 and less than 10% over the 1978-79 allowable costs also have their tuition costs listed.

(You are reminded that facilities/programs must be declared eligible and receive an approved allowable cost before a contract can be initiated by a public school for the placement or renewal of placements of Illinois public school handicapped students.) The listing of July 27, 1979, stated facilities programmatically eligible for 1979-80 at that time. Since then, additional facilities have become eligible. Without eligibility and an approved allowable cost, it is illegal to place, renew placements, and make payments with public funds.

Enclosed are two listings: 1) allowable costs for 1978-79 as of August 7, 1979, as a result of all appeals completed to date; and 2) allowable costs for 1979-80 to date. Only those facilities listed on the latter document are eligible for district use at this time. The second listing is stated in per diem terms covering the entire allowable cost of approved programs. Costs are stated in that manner for use in the contract form (IOE Form 19-83).

Those approved allowable costs for special education and related services, and room and board, are the responsibility of the state education agency and the local educational agency. The local educational agency is allowed by law to pay only the special education and room and board costs approved by the Governor's Purchased Care Review Board. Any other expenses not noted on these listings, i.e. ongoing medical services, are the responsibility of the parents or a third-party payor. Transportation, at least one round trip per regular school term, is a required expenditure of the local educational agency for residential placements.

Eligible providers will be informed under separate cover as to their allowable costs for 1979-80. If you have any questions regarding this matter, please feel free to contact Gail Lieberman, Manager, Department of Specialized Educational Services at 217/782-6601 or Jo Ann Day, Interim Director, Governor's Purchased Care Review Board.

Enclosures

ILLINOIS OFFICE OF EDUCATION
Department of Specialized Educational Services
100 North First Street
Springfield, Illinois 62777

AUG 24 1979

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NONPUBLIC FACILITY PLACEMENT CONTRACT

Agreement for Student Placement and Services under Ill. Rev. Stat. 1979, Ch. 122, Section 14-7.02

This document shall be entered by both the public school district of the student's residence and the nonpublic facility providing special education and related services for the placement of each handicapped student. Further conditions consistent with this agreement and the laws of the United States and the State of Illinois may be included under Section VI at the discretion of the public school district or the nonpublic facility. Copies of this document shall be kept in both the nonpublic facility and the local school district of residence of the student.

SECTION I

The ____ located at
(Name of Nonpublic Facility)

____, hereinafter referred to as facility, agrees to provide
(Address)

________________________ of ________________________, Illinois,
(Name of Student) (Address)

hereinafter referred to as student, pursuant to the terms and conditions set forth herein, a program of special education and related services in accordance with the Individualized Education Program (I.E.P.) adopted for student, during the period beginning ________ ________, 19 ___ and ending ________________, 19 ___, and the ________________________
(Name of Public School District)

Number ______, hereinafter referred to as district, agrees to pay an amount as determined and specified in Section II herein. Any person or entity having legal responsibility of student is hereinafter referred to as parent or guardian.

SECTION II

District agrees:

A. To pay facility the sum of $ ____________ in accord with the provisions of Section 14-7.02 of The School Code of Illinois, not to exceed costs approved by the Governor's Purchased Care Review Board as follows:

$________ for tuition per diem for regular school term
$________ for tuition per diem for summer term
$________ for room and board per diem for regular school term*
$________ for room and board per diem for summer term*

with final payment no later than ________________.

* If SB [illegible] (1979) is enacted into law, S.E.A. pays.

B. To provide all pertinent case study information requested by facility if written consent for such release can be obtained from the parents, guardian or those who have legal responsibility or control of student including a written copy of the multidisciplinary conference, a written summary of student's individual needs and a written description of the program required by student, to be attached to this contract.

C. To develop, with the nonpublic facility, an IEP which shall be a written description of the specific educational plan, program, goals, objectives, and evaluation procedures as well as special education and related services to meet the needs of student to the satisfaction of district in accordance with the case study performed by the district, and attached to this contract.

D. To conduct, in cooperation with the staff of the facility, an annual review of student's educational needs, including justification for continued placement, with written documentation of such review available to the facility.

E. To perform additional testing and evaluation of student for the purposes of placement, if such testing and evaluation is deemed necessary based upon the results of the annual review. Such evaluation shall not be solely for institutional purposes.

F. To provide transportation to and from facility for student as provided in Section 14-7.02 of The School Code of Illinois and pertinent regulations.

G. If applicable, to provide a written definition of credit hour requirements in each subject area that will be acceptable to the district upon the return of student to the public schools of district.

SECTION III

Facility further agrees:

A. To comply with the Rules and Regulations for Approval of Nonpublic Facilities Educating Handicapped Students Under Section 14-7.02 of The School Code of Illinois.

B. To comply with the Rules and Regulations for Illinois School Student Records and the Illinois School Student Records Act, Illinois Revised Statutes 1975, Ch. 122, Article 50

[illegible] 19-83 (6/79)

I

To provide to district the following:

1. Monthly reports of student attendance.
2. Reports on all testing and evaluation of student which is done by facility.
3. An annual progress report of student completed on forms provided by the State Board of Education ISBE Form [illegible].
4. A written report to the parents or guardian of student concerning the current status and progress of student. This report shall be signed by the parent or guardian and retained by the nonpublic facility with a copy submitted at the end of each semester and summer session to district.
5. Information and progress statements necessary for the annual review conducted by district for the determination of the future placement of student.
6. Notification of all significant changes in staff, location and physical facilities of facility as such changes occur.
7. Other reports that district may reasonably require from facility from time to time.

D. To assist the district and the parents or the guardian of student in the annual review of student's educational needs.

E. As appropriate, to provide documentation of curriculum and course material as required by district, sufficient to enable student to return to district with credit given for course work completed.

F. To permit district, its representatives and the representatives of the State Board of Education to visit and inspect the facilities maintained by facility and to permit evaluation of the programs and services provided by facility.

G. To secure and maintain during the term of this agreement such comprehensive public liability insurance necessary to insure against any loss or liability for personal injury to student which may arise from operations and activities conducted pursuant to this agreement whether such operations or activities are conducted by facility or by anyone directly or indirectly employed by facility.

H. To conduct an annual audit in order to verify actual expenditures for the special education and related services and room and board for student.

I. To assure that no person shall be denied participation in or benefits of any program or activity or otherwise be subjected to discrimination on the basis of race, color, national origin, or sex under any program or activity conducted by facility or in the employment practices of facility.

SECTION IV

Total payment shall be made on the basis of costs approved by the Governor's Purchased Care Review Board (GPCRB). Costs paid by other sources must be deducted from these payments. Please state these costs in per diem terms.

1) GPCRB approved tuition ____________
less other funding sources (specify) ____________
____________ ____________
____________ ____________ = total to be paid by LEA ____________

2) GPCRB approved room and board cost ____________
less other agency payment(s)* ____________
less insurance payment ____________
Other (specify) ____________ = total to be paid by LEA/SEA

3) Other costs ____________ Specify source of payment ____________

* responsible agency liability as designated

SECTION V

Failure to comply with the terms and conditions set forth herein shall be grounds for termination of this agreement. Facility may terminate this agreement with the consent of district upon written notification, including a statement of reasons for termination, to be provided at least 30 calendar days prior to actual termination, except when the health and safety of the student or other students are endangered. District may terminate this agreement by providing at least 30 calendar days notice prior to actual termination.

SECTION VI

Further conditions consistent with this agreement and the laws of the United States and the State of Illinois are as follows and attached.

We, the undersigned, agree to the terms and conditions of this agreement and do affirm that all required information and attachments required of district and facility will be appended to this document and retained in the files at district and facility.

____
Date *Signature of Parent/Guardian*

____
Date *Signature of State-Approved Director of Special Education*

____
Date *Signature of Superintendent of School District*

____
Date *Signature of Director of Nonpublic Facility*

9/19/79
Gary [illegible]

PRIVATE FACILITY RATES

SCHOOL	COMMENT	DAY TUIT.	TERM TUIT. (185 days maximum)	SUM. TUIT. (1/5 Term maximum)	YEAR TUIT.	DAY R/B	TERM R/B (304 days maximum)	SUM. R/B (1/5 Term maximum)	YEAR R/B	TOT. RATE	SCHOOL CHARGE
[illegible], Calif.											23,000
[illegible], Conn.		36.55	6,780	1,356	8,136	49.86	15,157	3,031	18,188	26,324	52,910
[illegible], Ill.	Boys	20.98	3,881	776	4,657	23.67	7,196	1,439	8,635	13,292	13,170
[illegible], Ill.	No openings	45.72	8,458	1,692	10,150	64.74	19,681	3,936	23,617	33,767	33,685
[illegible], Ill.	Boys	38.97	7,209	1,442	8,651	36.21	11,008	2,201	13,209	21,860	21,990
[illegible], Ill.	No openings	35.66	6,597	1,319	7,916	27.23	8,278	1,656	9,934	17,850	24,000
[illegible], Ill.	"Mild" BD-Girls	20.51	3,794	0		8.28	2,517	0		6,311	6,311
[illegible] III, Ill.	Girls Home			0				0			15,800
[illegible], Kansas	Hospital										90,000
[illegible], Va.	Girls										8,636
[illegible], Minn.	"Peer Culture"									16,479	13,400
[illegible], Mass.	Hospital										98,610
[illegible], Mass.				0				0			12,500
[illegible], Mass.	Girls										16,000
[illegible] Center, Mich.	Hospital	48.86	9,039	1,808	10,847	0				10,846	52,950
[illegible], Minn.	Hospital	123.20	22,792	4,558	27,350	22.67	6,898	1,380	8,278	35,628	71,600
[illegible], Missouri	[illegible]										12,350
[illegible], Missouri	Coed Home	16.50	3,053	610	3,663	18.09	5,499	1,100	6,599	10,262	10,262

EXHIBIT 6

9/19/79
Gary Nahen

PRIVATE FACILITY RATES

SCHOOL	COCIENT	DAY TUIT.	TERM TUIT. (185 days maximum)	SUM. TUIT. (1/5 Term maximum)	YEAR TUIT.	DAY R/B	TERM R/B (304 days maximum)	SUM. R/B (1/5 Term maximum)	YEAR R/B	TOT. RATE	SCHOOL CHARGE
Bellefaire, Ohio		57.36	10,612	2,122	12,734	25.18	7,655	1,531	9,186	21,920	20,695
Devereux, Penn.	"Manor" unit	41.69	7,713	1,542	9,255	18.46	5,612	1,122	6,734	15,989	21,600
DeNeuville, Penn.	Girls	11.54	2,135	427	2,562	4.69	1,426	285	1,711	4,273	6,000
Brown, Texas	"Oaks" unit	21.98	4,066	813	4,879	35.01	10,643	2,129	12,772	17,651	30,600
Brown, Texas	"Stonewood" unit	24.52	4,536	907	5,443	24.00	7,296	1,459	8,755	14,198	30,600
Devereux, Texas		41.69	7,713	1,542	9,255	18.46	5,612	1,122	6,734	15,989	24,000
Secret Harbor, Wash.	Boys	24.42	4,518	903	5,421	17.47	5,311	1,062	6,373	11,794	24,000
Marygrove, Mo.	Girls										12,071
Hillside, Utah											24,000

EXHIBIT E I

RIVERVIEW SCHOOL
HOPEFIELDS SCHOOL, INC.
EAST SANDWICH, MASSACHUSETTS 02537
617-888-0489

SEP 17 1979

September 13, 1979

Gary Hahn
Director, Secondary Program
Niles Township Department of Special Education
6950 East Prairie Road
Lincolnwood, IL 60645

re: Your funding memorandum
dated August 29, 1979

Dear Mr. Hahn,

Residential Schools such as Riverview have, in the Commonwealth of Massachusetts, been instructed by the Department of Education never to accept partial payment on tuition or residential costs from parents. The interpretation of the law by the Department of Education is that to do so would be in direct violation of the regulations, as well as the law (PL94-142.)

Therefore, I cannot accept funding from students of any state unless the rate set by the particular rate setting commission of that state is equal totally to our established rate. For 1979-80 the established fee is $10,750.00.

Medical costs are not to be assumed by the Department of Education for students from Illinois enrolled at Riverview for the 1979-80 School year; students from Illinois are to date privately placed because the rates set by Illinois are below our fees.

I am interested in how, and by whom, your directive of August 30th authorized partial payment by parents for other than medical costs. Perhaps it is a problem of semantics causing the confusion. Our fees are educational and residential (board and room) only. There are no other additional fees and perhaps it is to these that your directive of the 30th is addressed.

I would appreciate clarification of this point.

Sincerely yours,

Joanne Brooks

Joanne Brooks
Director

JB:jf

NON-PROFIT EDUCATIONAL CHARITABLE

EXHIBIT 1 I

Niles Township Department of Special Education
6950 East Prairie Road
Lincolnwood, Illinois 60645
(312) 675-8625

September 18, 1979

Dr. Jerry W. Vlasak, Chief
Administrative Review Section
State Policy and Administrative
Review Branch
Bureau of Education for Handicapped - HEW
Washington, D. C. 20202

Dear Dr. Vlasak:

I am enclosing a copy of some recent correspondence received from the Illinois State Board of Education relevant to a child with severe emotional problems. The child is very disturbed and extremely difficult to place. In fact, she was placed in a residential school and recently was dropped by that school because of an episode of running away.

The point of this letter is to call your attention to one paragraph of the findings of the Illinois State Superintendent of Education relative to this case. Paragraph (3) states that due process as it exists in Illinois is not available to the parents regarding actions of the Governor's Purchased Care Review Board. Needless to say, the local education agency also has no appeal process regarding actions of the Governor's Purchased Care Review Board.

It is not my intent to say that the Governor's Purchased Care Review Board is all bad. However, it does appear to me that the Governor's Purchased Care Review Board is the focus of our problem in placing "hard-to-place" students. The fact that the Purchased Care Review Board is beyond due process means that parents' only recourse would be state or federal courts. In view of the expense that the parents would be forced to endure in any sort of court action, I think it would be far more desirable to resolve the problem through negotiations between HEW and the State of Illinois.

Sincerely yours,

Vern Frazee
Vernon P. Frazee, Ed.D.
Executive Director

VPF/ls
enclosures (2)

CC: Dr. Cronin

COOK COUNTY DISTRICTS 67, 68, 69, 70, 71, 72, 73, 73½, 74, 219

STATE BOARD OF EDUCATION
ILLINOIS OFFICE OF EDUCATION

Donald F. Muirheid
Chairman
State Board of Education

Joseph M. Cronin
State Superintendent of Education

I

EXHIBIT 1

September 12, 1979

Mr. Edward E. Eckhardt
Superintendent
Morton Grove Public Schools
6200 Lake Street
Morton Grove, Illinois 60053

Re: Special Education Placement
Appeal of [redacted]

Dear Mr. Eckhardt:

This letter is to advise you that this office has reviewed the special education placement appeal of [redacted]. A decision on the appeal has been incorporated into Administrative Order Number SE-34-79, dated September 12, 1979, copy of which is enclosed.

Please make the necessary provisions to implement this decision. Thank you for your assistance in this matter.

Sincerely,

Joseph M. Cronin

Joseph M. Cronin
State Superintendent
of Education

Enclosure

NUMBER SE-34-79

ILLINOIS OFFICE OF EDUCATION
STATE OF ILLINOIS
SPRINGFIELD, ILLINOIS

IN THE MATTER OF THE SPECIAL EDUCATION PLACEMENT OF [redacted]	Review of a Special Education Placement Morton Grove Public School District 70 (Cook County)

(Page 1)

CONCLUSIONS OF LAW

The State Superintendent of Education has reviewed the Conclusions of Law of the hearing panel constituted under the provisions of Section 2-3.38 of The School Code of Illinois and the Rules and Regulations to Govern the Administration and Operation of Special Education and accepts the conclusions of said hearing panel, to wit:

(3) An Article X appeal is not the appropriate forum to address issues relating to the State Board of Education's alleged failure to appropriately monitor P.L. 94-142 programs, approved costs of the Governor's Purchased Care Review Board, failure of Department of Mental Health and Developmental Disabilities to provide services to handicapped students and the Department of Health, Education, and Welfare's failure to provide the State of Illinois with sufficient support to administer P.L. 94-142.

(Page 3)

The State Superintendent of Education, therefore, does not decide these issues.

(Page 4)

STATE OF ILLINOIS

EXHIBIT E

I

GOVERNOR'S PURCHASED CARE REVIEW BOARD

INSTRUCTIONS FOR COMPLETING THE FISCAL AND STATISTICAL REPORT FOR NONPUBLIC SCHOOLS

Direct Care

The division of direct costs into educational and noneducational must be made in accordance with Table One. Several of the distinctions made in that table require further comment:

SOCIAL SERVICES.

you BET! -> It will be difficult to determine which social services are educational as opposed to noneducational. The Governor's Purchased Care Review Board has decided that social services directly related to training should be considered educational while those that are primarily therapeutic should be considered noneducational. Thus, the allocation of costs will depend primarily on the IEPs of the majority of the pupil/clients.

PSYCHOLOGICAL SERVICES.

The only psychological services which may be claimed as educational are those provided by a certified school psychologist. (One exception to this is consultation from other psychologists and psychiatrists with staff. Direct pupil contact by nonschool psychologists and psychiatrists is, however, a noneducational cost.)

MEDICAL CARE.

Direct medical care is not an educational cost. Direct medical care includes any nursing services other than those offered by a school nurse and all care rendered by physicians. The cost of a

Medical Director in schools also licensed by the Department of Public Health is an allowable cost item only to the extent his or her advice is part of the Local Education Agency's (LEA's) diagnostic work used in development of the IEP. Since, however, responsibility for IEPs lies with the LEA, it is expected that they would pay for the cost of the agency's diagnostic efforts and that income would be offset against educational costs reported here.

CHILD CARE/AIDE.

As indicated above, part of the child care worker/aide costs will be considered room and board costs since they are related to personal care activities. The allocation of the remaining child care/aide costs will be largely up to the facility. The important point for allocating is when carrying out an activity which is part of the IEP, the cost should be allocated to educational costs. This will include most habilitation training and certain other social service functions. Unless quite detailed time sheets are kept by the agency, the actual allocation of costs from this line will be based on an approximation of how time is spent by the program personnel.

EXHIBIT I. I

TABLE ONE

DISTINCTIONS BETWEEN EDUCATIONAL AND NONEDUCATIONAL PROGRAM COMPONENTS

Service Area	Educational	Noneducational
INSTRUCTIONAL PROGRAMS	ALL AS REQUIRED BY IEP.	NONE
SPEECH AND LANGUAGE	ALL AS REQUIRED BY THE IEP (EXCEPT THAT REIMBURSEMENT FROM LEA's FOR DIAGNOSTIC SERVICES SHOULD BE OFFSET).	PREVENTIVE SERVICES
PHYSICAL THERAPY AND OCCUPATIONAL THERAPY	ALL AS REQUIRED BY THE IEP.	NONE
SOCIAL SERVICES	COUNSELING RELATED TO TRAINING, INCLUDING COUNSELING OF AND WITH PARENTS OF STUDENTS PRIMARILY IN TRAINING PROGRAMS, AS REQUIRED BY THE IEP. (IN PRACTICAL TERMS, MOST VOCATIONAL COUNSELING AND COUNSELING FOR DD STUDENTS WILL BE EDUCATIONAL.)	COUNSELING FOR THERAPEUTIC PURPOSES, INCLUDING COUNSELING OF PARENTS OF STUDENTS RECEIVING THERAPEUTIC COUNSELING. (IN PRACTICAL TERMS, MOST COUNSELING FOR NON-DD STUDENTS WILL BE NONEDUCATIONAL.)
PSYCHOLOGICAL SERVICES	ALL SERVICES OF A CERTIFIED SCHOOL PSYCHOLOGIST AS REQUIRED BY THE IEP.	ALL SERVICES OF A PSYCHOLOGIST WHO IS NOT A SCHOOL PSYCHOLOGIST AND ANY PSYCHIATRIC SERVICES.
MEDICAL CARE	AS REQUIRED TO DEVELOP THE IEP, THE MEDICAL COMPONENT OF DIAGNOSTIC SERVICES WOULD BE EDUCATIONAL. HOWEVER, THE COST OF THE DIAGNOSIS SHOULD BE PAID BY THE LEA. ALL REVENUE RECEIVED FROM AN LEA TO PAY FOR MEDICAL CARE DIAGNOSTIC SERVICES SHOULD BE OFFSET AGAINST THE COST OF PROVIDING THE DIAGNOSTIC SERVICES.	ALL OTHERS
RECREATION & RECREATIONAL THERAPY	IF UNDERTAKEN BEFORE 3 P.M. AS REQUIRED BY THE IEP.	IF UNDERTAKEN AFTER 3 P.M.
CHILD CARE/AIDE	AS REQUIRED BY IEP	ALL OTHER NONPERSONAL CARE SERVICES. (THAT PORTION OF COSTS DUE TO PERSONAL CARE SHOULD BE INCLUDED IN ROOM AND BOARD.)

GOVERNOR'S PURCHASED CARE REVIEW BOARD

EXHIBIT N 1

TEXT OF EMERGENCY RULE

RULE 3.21 ATTESTED COST REPORTS

Wherever possible, the Board will approve cost reporting formats already being used by other State agencies. The Board may also encourage other State agencies to adopt cost reporting formats which it approves if such formats meet the mutual needs of the agencies involved.

The format for cost reporting approved by the Board will specify the reporting of costs in three categories--room and board costs, special education and related service costs, and costs which are neither room and board, nor special education and related services

A. Special education and related services costs. The following shall be considered special education and related services costs:

1. Salaries, wages and fringe benefits for staff and fees for consultants involved in the direct delivery of educational services, including teachers, teachers aides, speech pathologists, audiologists, physical therapists, occupational therapists, social workers (insofar as they are performing counseling related to training rather than therapy), school psychologists, recreation workers (insofar as the costs relate to activities undertaken before 3:00 p.m. on school days), medical personnel (insofar as the costs relate to diagnostic work as opposed to ongoing medical care), and aides and child workers (insofar as they are carrying out tasks which are called for in the student's individual educational plan).

GOVERNOR'S PURCHASED CARE REVIEW BOARD

TEXT OF EMERGENCY RULE

RULE 3.21 ATTESTED COST REPORTS (CONT.)

C. Other costs. The following shall be considered neither special education and related service costs nor room-and-board costs:

1. Salaries, wages and fringe benefits for staff and fees for consultants not involved in the direct delivery of educational services as defined above; these costs include salaries of speech pathologists and audiologists insofar as they are conducting preventive care programs; social workers insofar as they are involved in therapeutic rather than training programs; psychologists other than school psychologists and psychiatrists (except to the extent that they are providing consulting services to the educational staff of the school); doctors, nurses and other medical personnel involved in the provision of ongoing medical care; and recreation staff, aides and child care workers who are involved in the delivery of some specific non-

EXHIBIT M I

GOVERNOR'S PURCHASED CARE REVIEW BOARD

TEXT OF EMERGENCY RULE

RULE 3.31 REIMBURSEMENT FOR ALLOWABLE COSTS

3. One-half of any grant amount which remains after steps one and two will be applied to reduce educational costs.

I. Wherever a pupil/client meets the eligibility requirements of the Illinois Office of Education and some other state agency--and the other state agency has approved the placement of that pupil/client in accordance with its own rules and procedures--the other state agency shall be responsible for the room and board reimbursement for the pupil/client. The Illinois Office of Education will reimburse for room and board payments only when no other state agency is involved in the placement of the child.

J. All payments by an insurer or other third party payor which have not been taken as a credit against educational costs and which can be used for room and board will be taken as credit against room and board costs.

K. (The Illinois Office of Education will not reimburse costs which are neither educational nor room-and-board.)

L. Other state agencies may reimburse for costs which are neither educational nor room and board, but their responsibility for so doing shall be limited by their own rules and procedures regarding such payments. To the extent no other state agency has responsibility for these costs, parents or other responsible parties will be assumed to have accepted responsibility for these costs. In no event shall other state agencies, parents or other parties be allowed to pay for educational and room and board fees in excess of those determined allowable by the Board. Any such payments would be used to offset the allowable costs for education and/or room and board approved by the Board for that particular student.

M. Other state agencies will continue to maintain effort as required by statute and regulation.

[illegible]

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STATE BOARD OF EDUCATION
ILLINOIS OFFICE OF EDUCATION

Jack Witkowsky, Chairman
State Board of Education

Joseph M. Cronin
State Superintendent of Education

EXHIBIT O

April 18, 1979

APR 30 1979

Mr. Gary Hahn
Director, Secondary Programs
of Special Education
8701 North Menard Avenue
Morton Grove, Illinois 60053

Dear Mr. Hahn:

I received your letter regarding the Constance Bultman Wilson Center concerning the reasons the Wilson Center will not accept the three youngsters to whom you refer.

It seems there is a basic misunderstanding of how the reimbursement system is set up for this year. The Wilson Center is approved for $36,484.00 for room and board and $4,499.00 for tuition. These are the top dollar amounts allowed. Any insurance should be off-setting revenue and is not in addition to the approved costs. A new cost reporting instrument has been developed and insurance for medical costs may be handled in a different manner for the next school term.

If these students cannot be educated by you and cannot be placed at Wilson Center you are to find another appropriate placement. Costs have been approved by the Governor's Purchased Care Review Board for a number of facilities since the December 20, 1978 listing. A copy of these additions is enclosed.

Sincerely,

Gail

Gail Lieberman
Manager
Program Administration Section

lr:3M
cc: Jim Stowell

100 North First Street
Springfield, Illinois 62777
217/782-4321

[illegible]
Chicago, Illinois [illegible]
312/793-2100

State Office Building
[illegible]
Mt. Vernon, Illinois [illegible]

Post Office Box [illegible]
[illegible]

[illegible]

DeSISTO AT STOCKBRIDGE SCHOOL

7

EXHIBIT F
DEC 1 8 19

December 11, 1974

[illegible]
[illegible]
Skokie, IL 60076

RE: 11/16/74

Dear Mr. Schultman:

We have not sent the contract back to Mr. Hahn on his advice because once we sign the contract, we have to accept only the moneys set by the state of Illinois and may not ask parents for any additional moneys. Since the money set by the state of Illinois is approximately $3,000 less than the total, we have three choices:

1. Send all the Illinois Students home immediately
2. Not sign contracts and expect parents to pay
3. Go bankrupt

The first choice is not fair to the child. The third does not fit into my deathwish pattern and the second is the only one that I feel comfortable going with.

Join with Mr. Hahn and the other parents in his school district to force the state to change its rate and have a meeting of the Rate Review Board.

Enclosed is a copy of the memo from Mr. Hahn to me.

→ 11/28/78 - to private schools

Sincerely,

A. Michael DeSisto

A. Michael DeSisto
Director

AMD
e s.

cc: Dr. Joseph F[illegible]sher
Dr. Vernon Frazen
[illegible]

I

Niles Township Department of Special Education
8701 North Menard Avenue
Morton Grove, Illinois 60053
966-4714

EXHIBIT Q

November 28, 1978

Dr. Joseph Fisher
Assistant Superintendent of Education
Illinois Office of Education
100 North First Street
Springfield, Illinois 62777

Dear Joe:

In our letter to you, dated October 12, 1978, Dr. Frazee and I described a seventeen year old child who was not in school because the Brown Schools, San Marcus Treatment Center, would not accept the boy at the State of Illinois ten month tuition and room and board rate.

Your letter to Dr. Frazee on this matter, dated October 23, noted that you were pleased to learn from Gail Lieberman that this child had been accepted by another private residential school- DeSisto at Stockbridge School. This boy has, in fact, been accepted by both DeSisto and by Elan One Corporation.

The same situation, however, continues to exist. Neither school will accept the boy at the Illinois rates.

1. Elan One will not sign a contract for the approved total rate charge of $12,183 when, in fact, their ten month charge is $14,500.
2. DeSisto at Stockbridge charges $10,400 for ten months. Their approved rate is $7,959. The parents have learned that either they pay the $2,441 difference (a "loan"?) or the child would not receive the program's counseling component. The parents will not pay. I will not accept a contract that makes them accept such an "arrangement".

The problem: Private schools would be foolish to accept an Illinois child at interim rates that are too low, or for that matter, where related costs have been placed under room

I

and board costs - when the Review Board looks at that one, what happens to our signed contracts?

I no longer am asking private schools to accept our children on the "good faith" that the Rate Review Board will set fair and reasonable rates, when, in fact, the Board has demonstrated "bad faith" - scheduled only once a week, the Board could have met now eleven times since September 1.

The boy sits home.

Very truly yours,

Gary

Gary Hahn
Director, Secondary Programs

GH/bs
Copies: Dr. Vernon Frazee
Dr. Wesley Gibbs
Ms. Gail Lieberman

(Instructions for IOE Form 34-30)

EXHIBIT E I

Item 13: Related Services

For the table below, give the supportive area in which a qualified specialist is working with this student or consulting with the student's teacher in accordance with his/her IEP. A maximum of 6 services may be listed. Do not include supervisors, administrators, or supportive personnel who are not working directly with this student or consulting with his/her teacher. If transportation is a related service noted on the student's IEP, it must be included in this item.

CODE	Related Services
AE	Adaptive Physical Education
AC	Aide-Class
AI	Aide-Individual Student (Use only for student whose funding is represented by Code C in Item 4.)
AT	Art Therapy
AU	Audiology
BR	Braillist/Reader
CI	Computer Assisted Instruction
CN	Counseling Services
CS	Consultant Services
DE	Driver Education
DP	Diagnostic Personnel
IS	Interpreter Services
MD	Medical Services (Diagnostic and Evaluation Only)
MS	Media Services
MT	Music Therapy
OT	Occupational Therapy
OE	Outdoor Education
OM	Orientation and Mobility
OR	Other Related Services
PC	Parent Counseling
PS	Psychological Services
PT	Physical Therapy
PY	Psychiatric Services
RC	Recreation
SH	School Health Services
SL	Speech/Language Services
SV	Supervision
SW	Social Work Services
TR	Transportation
VE	Vocational Education

Item 14: IEP

Indicate if IEP has been written for this student by marking Y for Yes or N for No.

Item 15: Annual Data

Niles Township Department of Special Education
6950 East Prairie Road
Lincolnwood, Illinois 60645
(312) 675-8625

August 30, 1979

Dr. Jerry W. Vlasak, Chief
Administrative Review Section
State Policy and Administrative
Review Branch
Bureau of Education for Handicapped
Department of Health, Education, Welfare
Washington, D. C. 20202

Dear Dr. Vlasak:

This letter is to place on the record that the State of Illinois is in flagrant violation of federal and state laws which require a free, appropiate public education for each handicapped child. This is similar to our situation of one year ago except this year it is worse.

We currently have at least 25 high school students who must be in residential placement in order to receive an appropriate education. The local education agency has followed all relevant laws and regulations to the nth degree and through much investment of staff-time has thoroughly documented that each one of these 25 students absolutely requires residential placement. We are blocked from placement, however, by the failure of the state to be in compliance.

The reasons it is impossible for the LEA to implement the recommended residential placement are as follows:

1. The state does not directly operate sufficient residential programs for emotionally disturbed/behaviorally disordered children.
2. State law does not permit local educational agency to establish and operate a residential facility.
3. The Governor's Purchased Care Review Board has not determined private residential facility tuition and related services and room and board rates which permit the public school to place these children under P.L. 94-142 provisions which insure a free and appropriate education.

COOK COUNTY DISTRICTS 67 68 69. 70. 71. 72. 73. 73½. 74. 219

An emergency exists because our schools begin operation for the 79-80 school year immediately after Labor Day and it is quite obvious at this point in time that these children are not going to receive any education - appropriate or otherwise - due to the complete failure of the State of Illinois to comply with the law and HEW regulations.

The facts are clear that there is a very serious problem regarding Illinois, but perhaps some brief comments are worth stating herewith:

1. There seems to be an unspoken and unwritten position by the Governor and his code departments and the Illinois State Board of Education that residential placement for children with severe emotional and behavioral handicaps is not an appropriate free public education. By eliminating all our possibilities for placing emotionally disturbed children in residential settings, and by insisting that the LEA serve these children locally, the implication seems to be that we should provide some sort of baby-sitting service and pretend that it is an appropriate program. Such action would relieve the state of embarrassment but would be a cruel hoax and we will not cooperate.

2. Illinois has historically been a state reluctant to operate direct residential services for emotionally disturbed children, choosing rather to contract for such service with private providers. In recent years, however, Illinois has even tended to resist the use of contracted services, except in the case of children who are psychotic with extreme overt symptoms of illness. Our students that we are concerned about are not raving maniacs and, hence, do not seem to merit residential placement.

3. We take the position that we are dealing with a failure on the part of the state since the state absolutely controls approval of residential schools, tuition rates to residential schools, does not operate residential services directly, and does not permit the LEA to operate residential services. The only way it would not be a failure on the part of the state would be if we were grossly in error on documentation of our placement recommendations.

4. Finally, I feel that under federal law, there is a mandate for you to enforce the law by requiring Illinois as a state to provide a

free appropriate public education to each handicapped child. At the very least, I would think you would conduct an emergency site visit to review our files, consult with our staff, meet our parents and verify to your own satisfaction the requirements for a free appropriate public education for these 25 or more pupils. Personally, I do not see how you can continue to accept various apologies and excuses from the Illinois Office of Education on this issue. The truth of the matter is that the problem lies totally within the office of the Governor by virtue of his control of the Purchased Care Review Board and the various code departments, not under the direction of the State Board of Education. It is absolutely clear to any objective and knowledgeable person that Illinois lacks an interagency agreement with teeth in it. Dr. Cronin, as state superintendent of education is in no position to engage in a big fight with the Governor, since the Governor appoints all members of the State Board of Education and Cronin's job would definitely be on the line were he to make an all-out fight as an advocate of the rights of these handicapped children. The controlling factor insofar as the Governor is concerned has to do with state budget and to a large extent the way federal funds are channeled into Illinois under social security titles, such as Titles XVIII, XIX and XX. There is a great fear on the part of the Governor and his Bureau of the Budget that this whole issue of private placement for handicapped kids could end up with prohibitive costs for the state. I sympathise with the Governor, but my duty as a child advocate is to insist on Illinois compliance with Section 504 and P.L. 94-142.

Sincerely yours,

Vernon Frazee

Vernon F. Frazee, Ed.D.
Executive Director

VFF/ls
enclosure (Dr. Cronin letter of 8/17/78)

CC: Dr. Martin / Congressman Mikva / Congressman Simon / Senator Berman
Representative Hoffman / Gail Lieberman / Joe Fisher / Joe Cronin
Parents of all pupils being denied their right to FAPE

Niles Township Department of Special Education
6950 East Prairie Road
Lincolnwood, Illinois 60645
(312) 675-8625

To: Parents of Dist. 219 Children Approved for Private Residential Facility Placement
Private Facilities Serving District 219 Children
Other Interested Parties

From: Gary Hahn
Gary Hahn
Director, Secondary Program

Date: August 29, 1979

Re: Private Residential Facilities

I have been inundated for over twelve months with discussion relative to private facilities. The purpose of this memorandum and the enclosed materials are designed to summarize the "private residential school problem". This summary is a result of discussion with H.E.W., I.O.E., Bureau of the Budget, legislators, private facilities, parents and attorneys.

1. Throughout the 1978-79 school year, the District was unable to pay money to private facilities where those facilities charged parents additional fees for non-medical costs - which would deny a _free_, appropriate education to children.

2. On August 20, 1979 the District was informed that _parents could now pay the difference_ between Illinois rates and private facility rates. This directive results in a revision of budgets, State Reimbursement claim forms, new invoices and additional private facility contracts for last year's placements.

3. The Governor's Purchase Care Review Board had provided the public schools with "room/board" and "tuition" rates for private facilities. The Review Board has not provided a break down of tuition rates in terms of both instructional costs and "related services" costs. We have, therefore, been unable to determine to what extent related services have been considered by the Board in determining private facility rates. This has resulted in a great deal of controversy and confusion. The District has not received documented answers to the following questions.

   - Are private facilities doing a poor job of accurately completing the financial forms required by the Review Board?

   - Is the financial form an overwhelming document requiring unneeded information and designed to negate both profit and related services?

COOK COUNTY DISTRICTS 67, 68, 69, 70, 71, 72, 73, 73½, 74, 219

- Why are other States paying the full private facility rates and not Illinois?

- What is determined to be medical treatment and what is determined to be a necessary related service?

- Are related services listed in "tuition" or in "room and board rates"?

- Are related services rejected altogether?

I enclose the following materials.

Memorandum to Dr. Fisher (8/29/79)
Private Residential Facilities Placement Status Report (8/29/79)
State of Illinois Position (B-64)
Dr. Cronin's Memorandum (8/17/79)
Overview of District 219 Programs (X275)

GB/sk

Niles Township Department of Special Education
6950 East Prairie Road
Lincolnwood, Illinois 60645
(312) 675-8625

To: Dr. Joseph Fisher
Assistant Superintendent
Illinois Office of Education
100 No. First Street
Springfield, Illinois 62777

From: Gary [illegible]
Gary [illegible]
Director, Secondary Program

Date: August 29, 1979

Subject: District 219 Students In Need Of Residential Placement

Inasmuch as the State assumes final responsibility for ensuring that handicapped children receive a free and appropriate education, I am referring the following fifteen children to the Illinois Office of Education. At this point in time, these children will not receive a free and appropriate education when school opens next week.

Child	Comment
1. Michael	- accepted at Elan One
2. Neil	- accepted at Elan One
3. Rick	- accepted at Elan One
4. James	- accepted at Elan One
5. David	- accepted at Elan One
6. Donna	- accepted at Elan One
7. Kathy	- accepted at Elan One
8. George	- granted [illegible]
9. [illegible]	- availabili[illegible]
10. Sharon	- [illegible]
11. Glenn	- rejected by [illegible]
12. Angie	[illegible]
13. David	[illegible]
14. Scott	[illegible]
15. Troy	[illegible]

[illegible] Local Educational Agency [illegible] free and appropriate education [illegible]

COOK COUNTY DISTRICTS [illegible]

1. These children exhibit severe emotional/behavioral handicaps and have been absolutely determined to need residential placement. Their parents concur.

2. The State does not directly operate residential programs for emotionally disturbed/behaviorally disordered children.

3. State law does not permit public schools to establish and operate their own residential facility.

4. The Governor's Purchase Care Review Board has not determined private residential facility tuition and room and board rates which permit the public school to place these children under P.L.94-142 provisions which insure a free and appropriate education.

In addition, many children presently placed in residential schools may be sent home because the Governor's Purchase Care Review Board has not determined rates acceptable to the private facilities.

I enclose my August 26 memorandum on this matter and all materials enclosed with that memorandum.

I await your instruction.

GH/sk

copies: Ms. Gail Lieberman
Dr. Vera Frazee
Dr. Wesley Gibbs

Niles Township Department of Special Education
6950 East Prairie Road
Lincolnwood, Illinois 60645
(312) 675-8625

NILES TOWNSHIP HIGH SCHOOLS, DISTRICT 219

PRIVATE RESIDENTIAL FACILITIES PLACEMENT STATUS REPORT

No emotionally disturbed/behaviorally disordered children or learning disabled children are presently placed in private facility day programs. The District provides a comprehensive service delivery for such children. (Please refer to Overview of Programs.)

Where a child must receive a twenty-four hour service delivery and be separated from his parents, the District seeks residential placement.

Eight multiply handicapped children are presently placed in seven private facility residential programs.

School	Number of Children	Status of Illinois Rates (See Code)
Little City, Ill.	2	C
St. Coletta, Wisc.	1	A
Grove School, Ill.	1	B
St. Vincents, Ill.	1	B
Riverview, Mass.	1	C
Kembly, Mich.	2	C
Willowglen, Wisc.	1	C

Three seriously retarded children are presently placed in three private residential facilities.

School	Number of Children	Status of Illinois Rates (See Code)
St. Vincents, Ill.	1	C
Woods School, Penn.	1	C
Glenkirk, Ill.	1	A (tuition only)

Eighteen emotionally disturbed/behaviorally disordered children are presently placed in ten private residential programs.

l	Number of Children	Status of Illinois Rates (See Code)
n One, Maine	8	B
thogenic School, Ill.	1	B
ilson Center, Minn.	1	B
Bellefaire, Ohio	2	C
Kents Hill, Maine	1	A
Desisto at Stockbridge, Mass.	1	C
Menninger, Kansas	1	C
Lawrence Hall, Ill.	1	A
Mary Grove, Missouri	1	C
DeNeuville Hts., Tenn.	1	A

CODE:

"A" - State tuition and room/board rates approximate private facility charges - resulting in a free, appropriate education for the child.

"B" - State tuition and room/board rates are drastically less than private facility charges - resulting in the parents paying a large portion of the cost or withdrawing their child from that facility and being unable to place their child in another facility.

"C" - No rates have been established for 1979-80 at this point in time - resulting in the parents paying the entire cost.

Special Note: All private facilities in question are approved by the Illinois Office of Education to appropriately serve handicapped children. Further, the approval section of I.O.E. gives special attention to the related therapeutic components of the facilities before granting approval. The District is required to list necessary related services with I.O.E. when seeking placement approval for a child at one of these facilities.

Summary

Thirty children are presently placed in private residential facilities. Twenty-five of these families will have to pay a large portion or all of their child's school costs.

Discussion

The Department of Mental Health considers Individual Care Grants for private residential facility placement for children under eighteen who exhibit severe emotional disturbance which is best characterized by a "loss of contact with reality". Even were one or two of our children to so qualify, D.M.H. in our area (sub-region 6) has a backlog of seventy approved cases and not enough money to consider additional cases until Spring 1979.

re no facilities with State approved rates in the entire United s who meet the following two criteria:

- Can appropriately serve severely emotionally disturbed/severely behaviorally disordered adolescents who must have twenty-four hour control and service out of their home.
- Have a rate which enables parents without resources to receive appropriate services for their child.

District 299 has presently determined that fifteen additional students with severe emotional/behavioral handicaps must be placed in residential facilities - facilities which not only provide appropriate child care (room and board) and an individualized academic service delivery, but an extensive related service component as well. By related service, we do not mean medical treatment. Rather, we refer to recreational therapy, counseling, social work and psychological services, psychiatric consultation, prevocation education, etc.

There is no such thing as an appropriate interim plan for these youngsters! They either get what they need or they "come apart".

Inasmuch as the State has not chosen to provide residential programs (witness: closing, rather than enlarging the Soldier's and Sailor's Home in Normal, Illinois), and the State has been unable to determine private facility rates which enable many children to remain or to be placed in appropriate residential facilities, the District has not been given the option by the State to appropriately place children in residential facilities.

With this memorandum I am referring the list of the fifteen unplaced private residential facility children to I.O.E. requesting instruction regarding their programming and programming for any of the presently placed children who may be sent home.

Gary Hahn

Gary Hahn
Director, Secondary Program

August 29, 1979

Niles Township Department of Special Education
6950 East Prairie Road
Lincolnwood, Illinois 60645
(312) 675-8625

STATE OF ILLINOIS POSITION: PAYING PRIVATE SCHOOLS

The attached memorandum from Dr. Joseph Cronin, I.O.E., dated August 15, 1979, articulates the following aspects of tuition and room and board payment to private schools.

1. The State determines the tuition and room and board rates for private schools.
2. If the private schools charge more than the State approved rates, the parents may pay the difference.
3. If the parents cannot or choose not to pay the difference, then either -
    - a. the private school accepts the child at the State rate, or;
    - b. the child does not attend that school.
4. Elan One Corporation, a private residential school in Maine is an example of this situation.

Ten Month Illinois Rates:

Tuition	-	$3,860.95
Room/Board	-	4,748.48
Ten Month total rate	-	$8,609.43
Summer School (1/5)	-	1,721.88
Twelve Month total rate	-	$10,331.31

Elan charges $17,400 for twelve month's tuition and room and board. Therefore, the parents would have to pay $7,068.69. (Insurance payments may be applied to this difference.)

Private schools may continue to submit data to the State in order to appeal that their rates be raised.

Special Note: Parents who wish to place their child in a residential facility which provides for emotionally disturbed children, and who cannot pay the difference, may request that the Department of Mental Health provide such placement instead of the public school district. To do so, they can contact the D.M.H., Subregion 8: phone 783-8440, extension 3039.

Gary T. Hahn
Gary Hahn
Director, Secondary Program

GH/bs
B-64/79
August 23, 1979

STATE BOARD OF EDUCATION
ILLINOIS OFFICE OF EDUCATION

Jack Witkowsky, Chairman
State Board of Education

Joseph M. Cronin
State Superintendent of Education

DATE: August 17, 1979

MEMORANDUM

TO: Directors of Special Education
Regional Superintendents

FROM: Joseph M. Cronin
State Superintendent of Education

SUBJECT: 1979-80 School Year Allowable Costs for Private School Placements

On August 17, 1979, the Governor's Purchased Care Review Board reviewed costs for the 1979-80 regular school term for eligible nonpublic special education facilities pursuant to Section 14-7.02 of The School Code of Illinois. Those facilities under their auspices with a complete cost report for 1979-80 on file have had an allowable cost set. Day facilities with an educational cost less than $4500 and less than 10% over the 1978-79 allowable costs also have their tuition costs listed.

You are reminded that facilities/programs must be declared eligible and receive an approved allowable cost before a contract can be initiated by a public school for the placement or renewal of placements of Illinois public school handicapped students. The listing of July 27, 1979, stated facilities programmatically eligible for 1979-80 at that time. Since then, additional facilities have become eligible. Without eligibility and an approved allowable cost, it is illegal to place, renew placements, and make payments with public funds.

Enclosed are two listings: 1) allowable costs for 1978-79 as of August 7, 1979, as a result of all appeals completed to date; and 2) allowable costs for 1979-80 to date. Only those facilities listed on the latter document are eligible for district use at this time. The second listing is stated in per diem terms covering the entire allowable cost of approved programs. Costs are stated in that manner for use in the contract form (IOE Form 19-83).

These approved allowable costs for special education and related services, and room and board, are the responsibility of the state education agency and the local educational agency. The local educational agency is allowed by law to pay only the special education and room and board costs approved by the Governor's Purchased Care Review Board. Any other expenses not noted on these listings, i.e. ongoing medical services, are the responsibility of the parents or a third-party payer. Transportation, at least one round trip per regular school term, is a required expenditure of the local educational agency for residential placements.

Eligible providers will be informed under separate cover as to their allowable costs for 1979-80. If you have any questions regarding this matter, please feel free to contact Gail Lieberman, Manager, Department of Specialized Educational Services at 217/782-6601 or Jo Ann Day, Interim Director, Governor's Purchased Care Review Board.

Enclosures

SPECIAL EDUCATION DISTRICT of LAKE COUNTY

4440 West Grand Avenue Gurnee, Illinois 60031 312-623-6031

October 9, 1979

OCT 10 1979

MEMO TO: Don Blodgett
State Plan Office
Bureau of Education for the Handicapped
Dept. of Health, Education and Welfare
Office of Education
Washington, D.C. 20202

FROM: Illinois Administrators of Special Education Members, Northern Suburban Area of Illinois

Dear Don,

As a compilation of the issues raised in our meeting on Friday, October 5th, we present the following overview.

Issue I

Illinois has an approved state plan under P.L. 94-142. The said state plan clearly delineates that the SEA is the single agency responsible for the implementation and compliance of Illinois services for eligible handicapped students.

How can the SEA and their local agent, the LEA, implement and comply with the state approved plan when at present:

1. Other state agencies and/or systems have total and complete control of vital systems; i.e., Illinois Governor's Purchased Care Review Board--a system not under the control of the SEA. In fact:
    - Has total control of the approval of private facilities in and out of the State of Illinois.
    - Has total control of the established rates paid to those facilities.
2. Another Illinois Code Department has been assigned, by the Governor and General Assembly, responsibility for the "state" schools serving:
    - Physically handicapped.
    - Hearing impaired.
    - Visually impaired.

Issue II

There are, in fact, a number of eligible special education students who are not placed and/or receiving free and appropriate placement; i.e., memo of October 5, 1979, from Gary Hahn:

To: Mrs. Gail Lieberman
Manager
Program Approval Section
Illinois Office of Education
Springfield, Illinois 62777

From: Gary Hahn
Director, Secondary Program

Date: October 5, 1979

subject: Niles Township High School, District 219 Children Presently Not Receiving a Free, Appropriate Public Education (FAPE)

Presently, there are no FAPE facilities available for the following children:

Ken - interim plan: hospitalization
Sharon - " : home instruction
David - " : home instruction
Jim - " : hospitalization
George - " : hospitalization

GH/bs
Copies: Vernon Frazee
Wesley Gibbs

This co-links to other data. Similar documentation is available from each person attending our October 5th meeting.

Issue III

The present Illinois system associated with the Illinois Governor's Purchased Care Review Board is totally in noncompliance with federal law; i.e., letter of September 28, 1979, from the Office of Civil Rights to Mundelein District #75 (attached). The pertinent sections are:

1. Page 2

"Although the functions of the Governor's Purchased Care Review Board is defined by Section 7.02 of the Illinois School Code, Article VI of the United States Constitution, (The Supremacy Clause), provides that no state or state law shall be in conflict with the laws of the United States or the Constitution. Regulations duly promulgated to implement a federal statute have the effect of law. Furthermore, 45 CFR 84.10(a) states:

> The obligation to comply with this part is not obviated or alleviated by the existence of any state or local law that, on the basis of handicap, imposes prohibitions or limits upon the eligibility of qualified handicapped persons to receive services. . . . (emphasis added)

In order to remedy the above violation, the Mundelein Public School District must provide to this office within 15 days of the date of this letter evidence of the District's attempts to provide Shawn an appropriate residential placement with related services at no cost to his parents."

2. Page 3

"Additionally, insofar as the Illinois Office of Education is also a recipient of Federal financial assistance and exercises control over the amount of money which may be approved for Shawn's placement, this Office is requiring the Illinois Office of Education to take whatever action is necessary to ensure that Shawn, and similarly situated handicapped persons, receive a free and appropriate education, in compliance with Section 504. (45 CFR 84.6 (a) (2))."

The State of the Art

Niles Township Department of Special Education
6950 East Prairie Road
Lincolnwood, Illinois 60645
(312) 675-8625

October 5, 1979

TO WHOM IT MAY CONCERN:

1. THE BROWN SCHOOLS (SAN MARCOS UNIT) CHARGES $30,600 A YEAR.
2. THE GOVERNOR'S PURCHASED CARE REVIEW BOARD APPROVES $14,198.
3. THE D.M.H. INDIVIDUAL CARE GRANT CONTRACT APPROVES $31,025 ($85 PER DAY).
4. THIS GRANT, HOWEVER, CAN NOT BE GIVEN IF D.M.H. IS NOT GIVEN MONEY TO PAY IT OR IF THE CHILD IS EIGHTEEN OR OLDER.

GARY HAHN
DIRECTOR, SECONDARY PROGRAM

Issue IV -- Due Process

The State Department in control of the three State Schools (the Department of Rehabilitation Services) does not have in place established due process procedures for handicapped children and their parents or public schools.

The Illinois Governor's Purchased Care Review Board does not have in place established due process procedures for handicapped children and their parents or public schools:

- Private schools can appeal their approval or rate.
- Parents cannot appeal.
- Public schools cannot appeal.

Note

(Page 1)

CONCLUSIONS OF LAW

The State Superintendent of Education has reviewed the Conclusions of Law of the hearing panel constituted under the provisions of Section 2-3.38 of *The School Code of Illinois* and the *Rules and Regulations to Govern the Administration and Operation of Special Education* and accepts the conclusions of said hearing panel, to wit:

(3) An Article X appeal is not the appropriate forum to address issues relating to the State Board of Education's alleged failure to appropriately monitor P.L. 94-142 programs, approved costs of the Governor's Purchased Care Review Board, failure of Department of Mental Health and Developmental Disabilities to provide services to handicapped students and the Department of Health, Education, and Welfare's failure to provide the State of Illinois with sufficient support to administer P.L. 94-142.

(Page 3)

The State Superintendent of Education, therefore, does not decide these issues.

(Page 4)

Issue V -- Related Issues

A number of related issues were raised:

1. Related Services

We feel that BEH needs to provide a clear and specific delineation of what are allowable and mandated related services.

2. Free

We also need a clear and specific definition of "free". Can parents pay for anything incorporated in the IEP for their handicapped child placed by the LEA; i.e., glasses, hearing aids, texts, medical services, therapy, skiing?

3. Accessibility to Facilities Under Other State Code Departments

There exists limited accessibility to those established facilities for eligible handicapped students under the control of:

- Department of Mental Health and Developmental Disabilities.
- Department of Rehabilitation Services.

4. One Rule Book for Eligible Handicapped Students

Under the P.L. 94-142 approved state plan Illinois departments/systems, there must exist one rule book under the management of the SEA.

Note

There exists some cross interference from the Federal systems; i.e., to capture monies under Title 19 and Title 20 Federal systems, some other code departments develop/adopt definitions and rules so that they can capture available federal dollars.

Inquiry

Is the federal system under P.L. 94-142, Title 19, Title 20 and vocational services, etc., in sequence?

We stand READY AND ABLE to:

- Provide pertinent data.
- Travel to Springfield to meet with SEA and BEH personnel or necessary others like the General Assembly.
- Travel to Washington, D.C., to meet with you and other BEH staff members.

Respectfully submitted,

E. Gaydon Brandt, Main Township Special Education Program
Stan Bristol, Northern Suburban Special Education District
Joyce Christensen, Main Township Special Education Program
Vern Frazee, Niles Township Department of Special Education
Ron Hage, Special Education District of Lake County
Gary Hahn, Niles Township Department of Special Education
Jim Mooney, Northern Suburban Special Education District
L. D. Vuillemot, Special Education District of Lake County

cc: Gail Lieberman, Manager, Program Administration Section, IOE
Joseph Fisher, Asst. Supt., Illinois Office of Education

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE FOR CIVIL RIGHTS - REGION V
300 SOUTH WACKER DRIVE - 8TH FLOOR
CHICAGO, ILLINOIS 60606

OFFICE OF THE
DIRECTOR

Mr. Richard Lanaghan
Superintendent
Mundelein Elementary School District #75
200 W. Maple Ave.
Mundelein, Ill. 60060

SEP 28 1979

Dear Superintendent Lanaghan:

The Office for Civil Rights received a complaint filed by Mr. The complaint alleged that the Mundelein Elementary School District #75, Mundelein Illinois has discriminated against his son Shawn on the basis of his handicap, because the district has denied him a free and appropriate education at no cost to his parents.

The Office for Civil Rights established jurisdiction with regard to your complaint under the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, 45 CFR Part 84, which prohibits discrimination on the basis of handicap in any program or activity receiving Federal financial assistance.

Pursuant to such jurisdiction this Office has investigated the complaint filed by Mr. . We have carefully reviewed all of the issues in the case and have made the following determinations.

The preponderance of the evidence establishes that the Mundelein School District has not provided Shawn with a free and appropriate education in violation of Section 504 and its implementing Regulation at 45 CFR 84.33(a) and 84.33(c). Our investigation revealed that the Mundelein School District has agreed with Mr. and Mrs. that the Brown School is an appropriate educational placement for Shawn, meeting his educational need for a residential treatment center with specific related services. Pursuant to the Governor's Purchased Care Review Board, the Illinois Office of Education approved tuition costs at the pro-rated yearly amount of $4,499.00 and room and board payments at the pro-rated yearly amount of $3,657.00. The Brown School, however, has a yearly cost of $30,600.00. Consequently, the proposed placement at Brown School never took place and Shawn remains in an interim educational program which was not appropriate to his educational needs. The Mundelein School District has made no further efforts to find an appropriate residential program for Shawn.

Section 504 addresses the responsibilities of the recipient when a handicapped person is referred to a private residential placement:

> (c) Free education-(1)General. For the purpose of this section, the provision of [illegible] free education is the provision of educational and related services without cost to the handicapped person or to his or her parents or guardian, except for those fees that are imposed on non-handicapped persons or their parents or guardian. It may consist either of the provision of free services or, if a recipient places a handicapped person in or refers such person to a program not operated by the recipient as its means of carrying out the requirements of this subpart, of payment for the costs of the program. Funds available from any public or private agency may be used to meet the requirements of this subpart. Nothing in this section shall be construed to relieve an insurer or similar third party from an otherwise valid obligation to provide or pay for services provided to a handicapped person.
>
> (3) Residential placement. If placement in a public or private residential program is necessary to provide a free appropriate public education to a handicapped person because of his or her handicap, the program including non-medical care and room and board shall be at no cost to the person or his or her parents or guardian. (emphasis added) 45 CFR 84.33 (c)(1) and (3).

Although the functions of the Governor's Purchased Care Review Board is defined by Section 7.02 of the Illinois School Code, Article VI of the United States Constitution, (The Supremacy Clause), provides that no state or state law shall be in conflict with the Laws of the United States or the Constitution. Regulations duly promulgated to implement a federal statute have the effect of law. Furthermore, 45 CFR 84.10(a) states:

> The obligation to comply with this part is not obviated or alleviated by the existence of any state or local law that, on the basis of handicap, imposes prohibitions or limits upon the eligibility of qualified handicapped persons to receive services. . . . (emphasis added)

In order to remedy the above violation, the Mundelein Public School District must provide to this Office within 15 days of the date of this letter evidence of the Ditrict's attempts to provide Shawn an appropriate residential placement with related services at no cost to his parents.

Additionally, insofar as the Illinois Office of Education is also a recipient of Federal financial assistance and exercises control over the amount of money which may be approved for Shawn's placement, this Office is requiring the Illinois Office of Education to take whatever action is necessary to ensure that Shawn, and similarly situated handicapped persons, receive a free and appropriate education, in compliance with Section 504. (45 CFR 84.6 (a)(2))

Mr. also alleged that he requested a due process hearing regarding the issue of non-payment for the Brown School. The School District denied this request. The greater weight of the evidence establishes that this refusal violates Section 504 and its implementing Regulation at 45 CFR 84.33(c)(4) and 84.36. The District must therefore alter its policies accordingly and provide evidence thereof to this Office within 15 days of the date of this letter.

We are obliged to obtain voluntary compliance through negotiations within 90 days after the date of this letter, 45 CFR 84.61, 80.7(d). In the event that we are unable to secure corrective action voluntarily, we must initiate enforcement proceedings in accordance with 45 CFR 80.8, 84.61.

This letter is not intended and it should not be so construed to cover any other issues regarding compliance with Section 504 of the Rehabilitation Act of 1973, that may exist and which are not specifically discussed herein.

Under the Freedom of Information Act, 5 U.S.C. 552, and its implementing Regulation, 45 CFR Part 5, it is the policy of the Office for Civil Rights to release this letter and all related material to any interested party upon request.

If you should have further question regarding this matter, please contact Mr. Lawrence P. Washington, Director Elementary and Secondary Education Division, Office for Civil Rihts at 353-2540.

Sincerely,

Kenneth A. Mines, Director
Office for Civil Rights
Region V (Chicago)

K

Niles Township Department of Special Education
6950 East Prairie Road
Lincolnwood, Illinois 60645
(312) 675-8625

STATUS REPORT: NILES TOWNSHIP COMMUNITY HIGH SCHOOLS, DISTRICT 219, CHILDREN REQUIRING PLACEMENT IN RESIDENTIAL FACILITIES SERVING EMOTIONALLY/BEHAVIORALLY HANDICAPPED CHILDREN

The Facilities

1. My investigation indicates there are twenty-eight such facilities approved by the State of Illinois.
2. Of these facilities, only eight have Illinois approved tuition and room/board rates which approximate the rates that will be charged by the facilities.
3. Six of these eight facilities cannot serve our unplaced children.
    - Chaddock and Lawrence Hall have turned down all referrals from District 219, except for two "milder" cases.
    - DeNeuville Heights and St. Mary's have turned down all referrals as too severe.
    - Larkin Home will accept no new referrals for 1979-80 placement.
    - The L. D. Institute is unable to manage acting out behavior.
4. Two facilities remain which can serve some of our unplaced children: Elan One and Walden III (the girls' group home for Riverwoods Academy children).

The Children

1. Michael, Neil, Nick, Donna, Kathy and Troy are awaiting placement at Elan One. When these placements will occur is uncertain. Due to the almost 13 month "argy-bargy" over the Elan One Illinois rate, Elan has been filling openings with children from other States.

720

2. There are no "FAPE" facilities for George, Ken, David and Jim.

3. Sharon and Debbie are unacceptable to DeNeuville Heights, St. Mary's and Elam One. Their files have been sent to Walden III. I believe Debbie may be accepted, but at this point in time I am doubtful that Sharon can be appropriately served by Walden III.

Summary

1. Seven District 219 children are awaiting "FAPE".

2. Five District 219 children presently have no probability of receiving "FAPE".

Gary Hahn

Gary Hahn
Director, Secondary Program

GH/bs
October 5, 1979

10/5/79

PRIVATE FACILITY RATES

SCHOOL	COMMENT	DAY TUIT.	TERM TUIT. (185 days maximum)	SUM. TUIT. (1/5 Term maximum)	YEAR TUIT.	DAY R/B	TERM R/B (304 days maximum)	SUM. R/B (1/5 Term maximum)	YEAR R/B	TOT. RATE	SCHOOL CHARGE *
[illegible], Calif.		55.21	10,214	2,042	12,256	13.29	4,040	808	4,848	17,104	25,000
[illegible], Conn.		36.65	6,150	1,230	8,136	49.86	15,157	3,031	18,188	26,384	52,915
Chaddock, Ill.	Boys	20.98	3,881	776	4,657	23.67	7,196	1,439	8,635	13,292	13,150
Larkin, Ill.	No openings	45.72	8,459	1,692	10,150	64.74	19,681	3,936	23,617	33,769	33,605
Lawrence Hall, Ill.	Boys	38.97	7,209	1,442	8,651	36.21	11,008	2,201	13,209	21,860	21,890
[illegible], Ill.	No openings	35.66	6,597	1,319	7,916	27.23	8,278	1,656	9,934	17,850	24,000
[illegible], Ill.	"Mild" BD-Girls	20.51	3,794	0		8.29	2,519	0		6,311	6,311
[illegible], Ill.	Girls Home	35.59	6,584	0		37.74 (?)	11,473	0		18,057	16,800
Menninger, Kansas	Hospital										40,000
[illegible], Ky.	Girls										8,636
[illegible], Mass.	"Poor Culture"	23.45	(220 days)		5,161	31.44	(360 days)		11,318	16,479	13,900
[illegible], Mass.	Hospital	27.51	5,089	1,018	6,107	65.20	19,821	3,964	23,785	29,892	49,010
[illegible], Mass.		19.37	3,583	0		8.52	2,590	0		6,173	18,600
[illegible], Mass.	Girls										16,000
[illegible], Mich.	Hospital	48.86	9,039	1,808	10,847	0				10,847	52,000
[illegible], Minn.	Hospital	123.28	22,792	4,560	27,352	[illegible]	6,892	1,378	8,270	35,622	71,640
Edgewood, Missouri	[illegible]	16.50	3,053	305	3,358	32.80	10,275	1,027	11,302	14,660	12,360
[illegible], Missouri	Coed Home	16.50	3,052	610	3,662	17.09	5,499	1,100	6,599	10,262	10,262

*Estimation based upon information received from the private facilities

10/5/79
Gary Baker

PRIVATE FACILITY RATES

SCHOOL	COMMENT	DAY TUIT.	TERM TUIT. (185 days maximum)	SUM. TUIT. (1/5 Term maximum)	YEAR TUIT.	DAY R/B	TERM R/B (304 days maximum)	SUM. R/B (1/5 Term maximum)	YEAR R/B	TOT. RATE	SCHOOL CHARGE *
[illegible], Ohio		57.36	10,612	2,122	12,734	25.18	7,655	1,531	9,186	21,920	30,699
Devereux, Penn.	"Manor" unit	41.69	7,713	1,542	9,255	18.46	5,612	1,122	6,734	15,989	31,600
[illegible], Penn.	Girls	11.54	2,135	427	2,562	4.69	1,426	285	1,711	4,273	6,000
Brown, Texas	"Oaks" unit	21.98	4,066	813	4,879	35.01	10,643	2,129	12,772	17,651	30,600
Brown, Texas	"Sherwood" unit	24.52	4,536	907	5,443	27.29	8,296	1,659	9,955	15,398	30,600
Devereux, Texas		41.69	7,713	1,542	9,255	18.46	5,612	1,122	6,734	15,989	29,000
[illegible], Wis.	Boys	24.42	4,518	903	5,421	17.47	5,311	1,062	6,373	11,794	24,000
Marygrove, Mich.	Girls	30.55	5,652	1,130	6,782	5.80	1,763	353	2,116	8,897	13,070
Hillside, Utah											29,800
[illegible], Wash.		37.56	6,948	1,389	8,337	37.64	11,443	2,289	13,732	22,069	46,000

*Estimation based upon information received from the private facility.

STATE BOARD OF EDUCATION
ILLINOIS OFFICE OF EDUCATION

Donald F. Muirheid, Chairman
State Board of Education

Joseph M. Cronin
State Superintendent of Education

K

September 28, 1979

4 1979

Mr. Gary Hahn
Director, Secondary Programs
Niles Township Department of
Special Education
6950 East Prairie Road
Lincolnwood, Illinois 60645

Dear Gary:

This is in reply to your request for technical assistance. The IOE Form 19-83 (revised in May, 1979) addresses third party payors in accord with Section 14-7.02. Parents or others may be asked to pay for ongoing medical care or those other costs which the Governor's Purchased Care Review Board (GPCRB) has stated as nonallowable components of cost.

My understanding of the GPCRB actions, calling to mind the Menninger situation last spring, is that parents can pay those costs excluded by that Board. The best example is ongoing medical care. However, other costs may possibly be included at this time due to the Board's regulations and subsequent instructions for the fiscal form.

The "per diem" costs for 1979-80 were figured in general on a 185 day for tuition, 304 day for room and board basis. The Board for 1979 established up to 1/5 of the regular school year for summer school services. This applies both to tuition as well as room and board. That formula is generally correct. There are some schools with a slightly higher number of tuition days as part of their calendar. You should verify the days with the facility in the contract process and/or with the Nonpublic School Approval Section of the Illinois Office of Education (Roy McDermott - 217/782-5517).

I do not know intimately the schools you list to know if the list is all inclusive. That too could be checked with Roy McDermott since his shop establishes eligibility for all of these facilities/programs. The "school charge" column on that list may or may not be accurate. Unlike you, I have dealt with but a few of these facilities. Some don't sound familiar at all. Arlington School/McLean Hospital now has a GPCRB rate, as does DeSisto (September 18, 1979, establishment). The "charge" and current information on the 1979-80 allowable cost can be obtained from JoAnn Day, Interim Executive Director of the Governor's Purchased Care Review Board, at 306 Lincoln Towers, 520 South Second Street, Springfield, Illinois, 62701.

We are pleased to offer technical assistance commensurate with the responsibilities of the Illinois Office of Education, Department of Specialized Educational Services.

Sincerely,

Gail

Gail Lieberman (Mrs.)
Manager
Program Approval Section

cc: Wes Gibbs
Don Blodgett
Joe Fisher

September 20, 1979
654 Sunset Drive
Naperville, Il 60540

JoAnn Day
Executive Director
Governor's Purchased Care Rate Review Board
State Capitol
Springfield, Il 62701

Dear Ms. Day:

Thank you for allowing me and other members of the Children's Mental Health Coalition to attend and speak at the September 18 meeting of the Governor's Purchased Care Rate Review Board. I was impressed with the board's concern for the urgent situation involving Elan Schools and 42 Illinois adolescents whose treatment there was in jeopardy.

I fear, however, that the board and the agencies it represents do not fully realise the dangerous state of the purchased care situation in Illinois at this time. Hundreds of emotionally disturbed children and adolescents are being denied appropriate education at this time. This is due, in part, to our state's inertia in carrying out placement procedures. It is primarily, however, due to the related fact that most facilities in the United States now REFUSE TO CONSIDER ADMISSION OF ILLINOIS YOUNGSTERS AT ALL.

Clearly the Purchased Care Rate Review Board is not responsible for initiating the policies that have led to this c risis. However, the board is now the only group that can resolve the problem either through its own direct action or through immediate forceful appeal to the agencies it represents.

There seem to be three main areas which are causing facilities to refuse new Illinois admissions, and in some cases, to send home youngsters.

The first is Illinois' practice of disallowing portions of a facility's fees. Though this may be done by the rate review board in a good faith attempt at financial accountability, it places the receiving facility in an untenable position. It is clearly unsatisfactory to the facility to revise its program in the light of Illinois' peculiar requirements. The facility must either take the loss, bill parents (despite Federal directives that parents not assume expenses and despite a line added to some Illinois contracts forbidding such billing), or not treat Illinois students. The Elan situation illustrates this point. Even though the rate review board took emergency action to revise its rates for Elan in order to keep Illinois students there, it still disallowed $921.00 in Elan's fees. Some disallowances seem picayune and clearly discriminatory as they are allowed in public achools in state. Others may not be allowed in public schools, but seem to the facility to be a necessary part of treatment nonetheless. We are buyers in a seller's market in this case. There are no alternative suppliers as Illinois policies have alienated most out of state facilities and, most importantly, as youngsters require certain specific programs. It is not possible to find alternative facilites that offer exactly the treatment program a child needs. Even if such an alternative could be found, and even if if would accept an Illinois student, youngsters now in treatment cannot be moved without severe repercussions in their mental health.

The review board should institute a policy of allowing a certain percentage - 5% or 10% - for reasonable practices not covered in Illinois rules and regulations. The alternative, which now confronts us, is that Illinois youngsters are denied education and rehabilitation.

A second area which prompts facilities to refuse Illinois youngsters and which jeopardizes the mental health of those waiting for placement is the time lapse in placement proceedings. My daughter was staffed in April. The IEP was written for residential placement. School personnel, her short term care personnel, and I agreed upon the proper facility to meet her particular needs. Forms went into the state in late May from Naperville School District. There is still no contract between Illinois and Brown Schools. She was admitted June 21 only because I begged, insisted, and agreed to pay her bills in advance. Brown, which no longer considers Illinois children without such family support, told my attorneys that Illinois forms were extremely difficult. Cedu in California, which no longer will consider Illinois children, said that no other state requires extensive complicated forms like Illinois. It is certainly possible that Illinois can say that the facility has not sent in forms properly filled out. However, if our forms are such a burden to facilities that they cannot or do not fill them out to Illinois satisfaction, the effect is still to deny service to youngsters. If the time lapse problem lies in IOE, the effect is still to deny services to children.

Another part of this problem is Illinois practice of paying for service long after the service has been rendered. Receiving treatment centers do not have an operating budget that allows for such lags in payment.

The rate review board should waive some of the forms and paper work, especially for well known and reputable institutions, until the present backlog of placements is cleared up. Payment should begin immediately and be continued on a monthly basis. The alternative is denial of education and rehabilitation of handicapped younsters.

The third area of concern is a big one. Illinois does not at this time allow payment for therapy and related services. Since most placed youngsters are clearly in need of such treatment and since most facilities exist to give that treatment as part of their programs, this places an enormous financial burden on parents or denies youngsters admission to facilities. In my daughter's case, Brown Schools' fees run about $45000.00 on a yearly basis for the Intensive Care Unit where she now is. (She will not be on that unit for an entire year, of course.) The fees for open dorm placement are about $32000.00. Illinois rate is around $10000.00 for Brown. When my insurance is exhausted this winter and when my savings are exhausted in the spring, she will have to come home in the early stages of desperately needed treatment. She will still be unable to attend public school, will require close supervision, and will not be ready to continue therapy on an outpatient basis. This problem is compounded in some cases where Illinois has begun to pay room and board expenses only after insurance, which did pay them, has been exhausted thus depleting major medical benefits that could have extended treatment.

Since federal law mandates education and rehabilitation, since other states pay full fees for youngsters' treatment, and since the consequences of adolescent and child emotional illness are suicide, drug use and related death, crime, adult mental illness, and adult unemployability, the rate review board should full fund placement of disturbed children and adolescents.

With prompt and appropriate attention mentally ill handicapped youngsters can be successfully treated and returned to regular schools and a normal life. Without intervention early in the illness, children face a much longer treatment period and a greater risk that disabling consequences of their handicap will interfere with education and a successful adult life.

Illinois' reputation in the area of education and treatment of emotionally disturbed handicapped children is a dismal one. It is hard to believe that because of the accident of living in my home state I must face complete economic depletion and then still be unable to secure necessary services for my child.

The members of the Governor's Purchased Care Rate Review Board are to be commended for their action to relieve the immediate crisis in the Elan situation. Their action in forming a committee to investigate the matter of payment for therapuetic and related services is a step in the right direction.

However, children are now sitting at home in suicidal depressions, engaging in destructive behaviors, placing an enormous emotional and financial burden on their families who must often stop work to stay home and provide supervision. Some youngsters who need long term treatment are now in expensive short term facilities, inadequate placements, or stop-gap group home situations. Others, like my daughter, are receiving good care which, if continued, could result in a healthy productive adult.

There is no time left. Immediate emergency action is necessary to place youngsters now waiting and assure continued funds for those in treatment. Such action will have to be undertaken with sufficient vigor to convince out of state facilities that now refuse Illinois youngsters that Illinois does finally intend to provide proper placement for its emotionally disturbed handicapped children.

Please advise me or other members of the Children's Mental Health Coalition of what we can do to help you resolve this urgent issue.

Sincerely yours,
Patricia Emmerich
Patricia Emmerich

cc: Members, Governor's Purchased Care Rate Review Board

Members, Illinois General Assembly

Children's Mental Health Coalition
Suite 680
407 South Dearborn
Chicago, Illinois 60605

csdb
COLORADO SCHOOL FOR THE DEAF
AND THE BLIND
Kiowa and Institute Streets
Colorado Springs, Colorado 80903
Telephone (303) 636-5186

Robert T. Dawson, *Superintendent*

cde
COLORADO DEPARTMENT OF EDUCATION
State Office Building, 201 E. Colfax
Denver, Colorado [illegible]
Telephone (303) [illegible]-2212

Calvin M. Frazier, Commissioner

July 24, 1980

Representative Ken Kramer
Suite 1724
Longworth House Office Building
House of Representatives
Washington, D.C. 20515

Dear Mr. Kramer:

Per your request, please find my recommendations for defining the term "least restrictive environment".

Thank you for giving me the opportunity to comment.

Sincerely,

Robert T. Dawson

Robert T. Dawson
Superintendent

RTD:fw

Enc.

LEAST RESTRICTIVE ENVIRONMENT

JUL 28 1980

Comments by
Robert T. Dawson, Superintendent
Colorado School for the Deaf and the Blind
Colorado Springs, Colorado

Current Interpretation

Least restrictive environment is usually interpreted as placement in a public school with nonhandicapped children.

Comment: For some handicapping conditions, this interpretation may be appropriate, i.e., paraplegics. One must consider the handicapping condition. For example, a deaf child who is placed in a public school with nonhandicapped children may be more restricted educationally, psychologically, and socially. His handicap consists of communication and language deficits. Socially, mentally, and educationally he may suffer. In this case, depending on his needs, placement in a public school may well have amounted to the most restrictive placement.

The blind child may find himself placed in a more restrictive environment in the public school due to environmental isolation.

For both handicapping conditions, the needs of the child must be considered. While the public school may be the least restrictive for some children, it may indeed be the most restrictive for others.

Recommendation: The least restrictive environment should be defined as that environment in which the needs of the individual child are appropriately met.

Rationale: The concept that an appropriate education must occur in a particular environment, i.e., public school violates the constitutional rights of hearing and visually impaired children to enjoy freedom of association and imposes restrictions which are not imposed on other children. If the hearing or visually impaired child has an appropriate educational program, the environment in which it occurs is secondary. Further, the least restrictive environment for a given child may change as the child's needs change, i.e., a given child's needs may require placement at Fort Logan Mental Health Center for two weeks. For that period of time, Fort Logan becomes the least restrictive environment. When he no longer needs that environment to meet his needs, another environment then becomes more appropriate and least restrictive.

JUL [illegible] 1980

ILLINOIS/INDIANA RACE DESEGREGATION
ASSISTANCE CENTER
SCHOOL OF EDUCATION

Ms. Judy Waggoner
House Subcommittee on Select Education
Room 320, Cannon House Office Building
Washington, D.C. 20515

July 25, 1980

Dear Judy,

This follows our telephone converation concerning the error in testimony which I presented during Congressman Simon's questioning at hearings June 6 at Chicago of the House Committee on Education and Labor, Subcommittee on Select Education.

Mr. Simon asked me about EMH eligibility criteria in Illinois and Indiana. My own efforts in technical assistance related to the misclassification issue have been in Illinois, and I answered his request for information on Indiana criteria on the basis of a recent journal article which listed state policy on EMH IQ score cut-offs. Later, I read the Indiana regulations and discovered that, in fact, the article had been inaccurate.

Testimony should be corrected to indicate that the following criteria for EMH eligibility exist in the two states:

Illinois: Adaptive behavior must be considered in making eligibility determinations. There is no specified IQ score upon which eligibility is dependent.

Indiana: Adaptive behavior must be considered in making eligibility determinations. Regulations state that the mildly mentally handicapped child, in order to be eligible for EMH classification, must "usually" exhibit measured intelligence, determined through application of an individualized standardized instrument, which is two or more standard deviations below the mean for the instrument.

I appreciate your making the necessary corrections. Thank you very much.

Sincerely,

Joan First

Joan First
Specialist

3951 NORTH MERIDIAN STREET • INDIANAPOLIS, IN 46208 • (317) 264-2836
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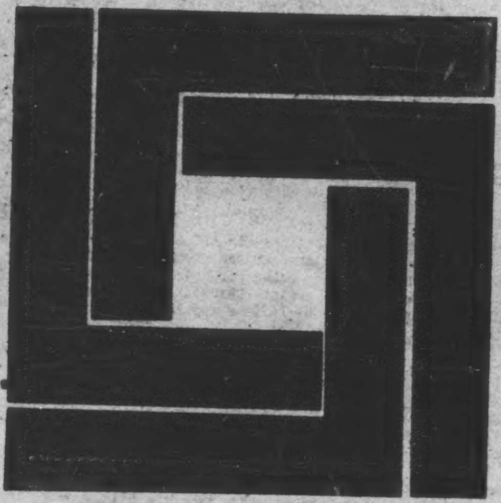
ERIC EXCEPTIONAL CHILD EDUCATION REPORT



19 STEPS FOR ASSURING NONBIASED PLACEMENT OF STUDENTS IN SPECIAL EDUCATION

JAMES A. TUCKER

ERIC

A PRODUCT OF THE ERIC CLEARINGHOUSE ON HANDICAPPED AND GIFTED CHILDREN

NINETEEN STEPS FOR ASSURING NONBIASED PLACEMENT OF STUDENTS IN SPECIAL EDUCATION

James A. Tucker, Ph.D.

August 1980

A Product of the ERIC Clearinghouse on Handicapped and Gifted Children
The Council for Exceptional Children
1920 Association Drive
Reston, Virginia 22091

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INTRODUCTION

Recent litigation has consistently made the point that tests used to place students in classes for the mentally retarded, as well as for several other classifications, have not been validated for that purpose (Larry P. v. Riles, Mattie T. v. Holladay).

> "Held, using standardized intelligence tests that are racially and culturally biased, have a discriminatory impact upon black children, and have not been validated for placement purposes, and the general use of placement mechanisms, that taken together, have not been validated and result in a large overrepresentation of black children in special EMR classes, violates Title VI, section 504 and P.L. 94-142, and California and U.S. Constitutional guarantees of equal protection of the law." (Larry P. v. Riles in Education for the Handicapped Law Report, 1979, 3, 551:296)

Notice that it is not just tests that are declared to have a discriminatory impact, but also placement mechanisms, that, taken together, have not been validated and result in a large overrepresentation of black children in special EMR classes. While the Larry P. case dealt only with the EMR classification, the Mattie T. case added the Learning Disabilities (LD) classification to the alleged areas of discrimination. Some reasons why these two classifications are singled out are addressed by Tucker (1980). The offending classifications are based largely on widely differing definitions and varying subjective judgments as to what constitutes a "real" handicapped student within those classifications. Disproportionate placement has not been noted nearly so often in the other classifications of handicapped students (with the exception of Emotionally Disturbed) because the identification of the remaining types of handicapping conditions are based largely on operationally defined physical symptoms. For additional discussion of this subject see Heber (1961), Hobbs (1975), Lambert, Wilcox, and Gleason (1974), and Mercer (1973).

While the assertion is often made that the tests are at fault, the literature, as well as experience, has not provided a clear statement to that effect (Reschly, 1980; Tucker, 1977). It appears that test data are indeed used in support of biased decisions to place students in classes for the mentally retarded and the learning disabled, but it is also clear that such decisions are often made without regard to the data (Morrow, Powell, & Ely, 1976; Tucker, 1977).

It seems clear that biased placement often has its roots at the point of referral, long before any test data are generated; in fact, test data may simply be collected to reinforce a covert decision that has already been made (Audette, Boston, Linde, Pellow, and Tucker, 1979; Mercer, 1973).

A mountain of material has been written on the techniques, instruments, and considerations that should be brought to bear when performing non-biased assessments (Bogatz, 1976; Duffey, Salvia, Tucker, and Ysseldyke, in press; Reschly, 1979).

Another mass of information, most of which has not appeared in the literature, exists in the form of local and state policies and procedures that represent a state-of-the-art in practice rather than in the literature. It is this state of actual practice that has served as the primary basis for this paper. The author has been involved with the special education policies and procedures in more than half of the states and dependent territories of the United States. The procedures vary widely in quality, but many exemplary practices have proven themselves in use.

Drawing upon the "best practices" observed, this paper presents a method that school districts can use to determine whether or not biased placement might be occurring within the appraisal process at large, leading to discrimination against minority group students by supporting the placement of such students in special education classes in disproportionately high numbers.

Of course, the only reason for wanting to determine whether or not biased placement procedures are in effect is to bring them to view in such a clear manner that they can be corrected, thus establishing a non-biased system of placement and maintaining such a system by careful self study on the part of the local district. It is to this end that the "Nineteen Steps" are presented. First, several definitions are in order.

Definitions

The three terms appraisal, assessment, and evaluation are often used interchangeably; such use inhibits communication regarding the procedures that can assist in reducing bias in the special education placement of handicapped students. For the purposes of this paper, the three terms are defined as follows:

> Appraisal: The overall process, beginning with the identification of a student with possible special education needs and continuing through screening, assessment, production of I.E.P., and evaluating the student's progress as services are delivered in accordance with the I.E.P.

Assessment: The collection of data about a student in answering specific questions generated to determine what the student's condition and needs are.

Evaluation: The process by which data gathered in assessment is compared with established criteria to make decisions regarding a student's educational program.

To set these definitions in a context of placement, the appraisal process is the entire set of procedures leading to and evaluating placement. Assessment occurs continuously during the appraisal process; the teacher's assessment, the screening assessment, the "comprehensive individual assessment," and finally the assessment of progress. Evaluation begins when the teacher interprets student data to decide whether or not to refer the student. Then the screening mechanism of the school (committee or individual) evaluates additional data to decide on a number of alternative courses of action, one of which is to consider special education; the multidisciplinary assessment team evaluates the data to decide whether or not there is sufficient information to answer the questions addressed; the I.E.P. committee evaluates all of the data to decide whether the student is eligible for special education placement; and, finally, personnel evaluate student progress data to decide on continued placement and/or modifications in the student's program.

The Appraisal Process: The Nineteen Steps

The following list of steps is intended to provide a framework for a non-biased placement system. Since it is virtually impossible to totally eliminate bias in such a system, perhaps it would be more appropriate to refer to a "least biased" placement process (Coulter and Morrow, 1978)--one that reduces bias as much as possible. For the purposes of this paper, we will use the term "non-biased assessment," since it has become a commonly used descriptor for the desired condition (Bogatz, 1976; Bogatz, 1978; Oakland, 1977; and Reschly, 1980).

The list specifies nineteen points in the appraisal process at which assessment data is (or should be) collected and used in evaluating a student's program from a non-biased perspective. These steps have been laid out in the logical sequence that would be used by a district. All of the steps represent actual practices in effect in school districts across the country. In fact, they represent practices drawn from site visits to many school systems throughout the United States and its dependent territories. While little actual research has been conducted with respect to the reduction of biased placement, there is considerable face validity to the procedures presented. Research is badly needed to demonstrate the efficacy of such steps, and the steps are ordered to facilitate such research.

The steps are set forth in a format of specific questions that would be answered by taking each step. This format is used partly to aid the reader in understanding the context within which the steps are ordered, but also to model a process in which all data leading to evaluation for placement should be collected with some idea of what questions need to be answered by the data (National School Psychology Inservice Training Network, in press).

In every case the question preceding the step is a "yes" or "no" question, the answer to which will either end the process, refer to an earlier step, or lead on to the next step.

The description of each step includes general reference to the personnel who should carry out the step, the general procedures to take, and precautions to consider in assuring that the step is taken in a non-biased manner.

Throughout the following discussion of questions and steps, reference is made to a district tracking system. There are any number of ways to set up such a system, but it is simply a method for tracking dates and events as they occur for each student referred. In its simplest form, such a system would be a paper and pencil format maintained in each student's individual folder. In its most sophisticated form, the tracking system would be automated, using computer facilities available to the district.

Finally, a book could be written about the procedures and precautions to take at each step. This presentation is very brief and intended only to raise some of the issues involved as well as to portray the logical sequence of a process that can be implemented.

QUESTION 1 (to be answered by whoever is thinking of initiating a referral): Is there a significant problem involving this student? If the answer is "No," there is no need to proceed with Step 1. If the answer is "Yes," proceed with Step 1.

STEP 1: INITIATE REFERRAL. A teacher (or other individual, in some cases) may recognize that a student has a problem significant enough to warrant a structured look at the student and the learning conditions of the student's environment (in school and out of school) in order to find the most immediate possible solution to the problem. It should be noted that no blame or cause is implied at this point. The behavior may be perceived as a problem only by the teacher, but, since the teacher is the student's first line of defense (albeit also the student's first line of attack), the behavior is accepted as a problem (or behavioral discrepancy), because, for someone (the teacher if not the student), a problem does exist.

The purpose of isolating this step is to cause the referral initiator (normally the teacher) to think through the motives and consequences of initiating a referral.

Normally a referral is initiated by filling out a referral form. The form suggested here would begin quite a bit earlier in the process than most of those presently in use. It begins with the teacher filling out a brief statement of the problem. For the record, if the referral is acted on by the district at a later date, it is important to note the beginning of the process by recording the initiator's name, majority or minority group membership of the student, and date of initiation.

Since this step is only taken by the teacher and involves NO ONE ELSE at this point, no record of the student's name will be made on any monitoring or tracking forms until the appropriate parent involvement is obtained at a later step. If the problem is resolved by the subsequent step (Step 2), the teacher would record (for the purposes of the district's monitoring of its appraisal process) only the fact that an individual of x racial or cultural group was considered in this manner on x date, and that the "problem" was resolved either prior to or during Step 2 on x date.

QUESTION 2: Is the problem worth taking time to pursue? If the answer is "No," record the answer on the district tracking form and terminate the process. If the answer is "Yes," proceed with Step 2.

STEP 2: COLLECT ANECDOTAL OBSERVATIONS. During this step, the teacher simply records daily a description of the student's behavior relative to the problem identified in Step 1. The number of days over which such observations should be recorded, as well as the length of such statements of behavior, is left to the teacher. However, as a general rule, observation should probably continue over at least three days during which the problem is noted. The statements should be brief but detailed enough to adequately describe the student's behavior.

Also, the teacher should note the degree to which the student's behavior is different from the average behavior of other individuals in the class. The purpose of this, of course, is to encourage the teacher to establish the uniqueness of the behavior. This may help the teacher discover possible biases by introducing the idea of objectively comparing the "problem" student with other students in the class on the offending behavior identified in Step 1. For example, it could be that the teacher's difficulty with the student does not stem from the student's behavior, which may not in reality be different from the behavior of others in the class.

Incidentally, a "behavior" may mean an academic behavior (i.e., math or reading performance) as well as a physical or emotional behavior.

When the observational data is collected, the teacher simply attaches this anecdotal data to the form initiated in Step 1, and asks Question 3.

QUESTION 3: Does the initial observational data collected on a day to day basis suggest that a significant problem exists? If the answer is "No," record the answer on the district tracking form and terminate the process. If the answer is "Yes," proceed with Step 3.

STEP 3: CONTACT THE STUDENT'S PARENT OR GUARDIAN. At this point, the teacher should talk to the student's parent or guardian. This is not a formal meeting of any particular consequence for the district, but it is a very important step for the student involved. The visit is simply a contact (perhaps by phone, if that is most convenient) with at least one of the parents or with the student's guardian. This step is a preventive measure, but more importantly it is a means of gaining information that might provide an explanation for the problem and a way of resolving it quickly and easily.

If the parent or guardian is not available for such a visit, another person who has known the student for a significant period of time should be consulted. This person could be a relative, a neighbor, or even another member of the school faculty, such as a school social worker or a former teacher. But ALWAYS try to contact the parent or guardian first, and make every reasonable effort to do so before pursuing these alternatives.

Perhaps the greatest benefit of this visit with the parent or guardian is the reduction of future threat on the part of the parent or guardian. Where school districts have put such a parent contact into effect, the number of formal hearings involving parent complaints has been reduced to almost zero.

After the parent visit, the teacher records a summary of the meeting, including what was learned and the possible effects of the information on the student's school program. If suggestions or recommendations are made by the parent, these are recorded also. The summary notes are attached to the description of the problem and the anecdotal records, and the teacher is ready to address Question 4.

QUESTION 4: Does the information gained from the parent or guardian suggest the need for alternative classroom intervention? If the answer is "No," record the fact on the district tracking form and terminate the process. If the answer is "Yes," proceed with Step 4.

STEP 4: ALTERNATIVE CLASSROOM STRATEGIES ARE IMPLEMENTED. The teacher may have ideas of alternative strategies to assuage the problem, and the parent/guardian visit should have provided at least some information that would offer additional suggestions for ways to deal with the problem.

In this step, the teacher first records one or more (preferably two or more) strategies to be used over a specified period of time to help alleviate the problem behavior. Then the teacher implements these strategies, either concurrently or in tandem, and records daily observations (as in Step 2) of the behaviors in question to determine the degree to which the problem is relieved.

At this point especially, the teacher should have a positive attitude toward the child and an optimistic view of the outcome of the strategies, since the expectations of the teacher significantly influence the outcomes. The assumption should be made from the beginning that the alternatives tried will work. If this assumption cannot be made, either something is wrong with the strategies or the teacher needs more understanding of the student's situation. The step may sometimes be viewed as a hurdle to get past in order to get on with the referral, but the teacher should make every effort to understand the student and/or the student's family and background. This will make the strategies more meaningful and assure a greater degree of confidence in their success on the part of the teacher.

The anecdotal records kept by the teacher during the alternative strategies tried in this step should be attached to the initiated referral form, along with all preceding notes and observations. The form is then signed and dated, and Question 5 is addressed.

QUESTION 5: Do the observational data from Step 4 show that the problem behavior persists even when alternative classroom strategies are implemented? If the answer is "No," record that fact, sign and date the district tracking form, and terminate the process. If the answer is "Yes," proceed with Step 5.

STEP 5: BUILDING LEVEL (SCREENING) REFERRAL. This is equivalent to the traditional "screening" step that has been a standard part of most appraisal processes. But in this case it implies a group process where a minimal amount of data is accumulated to assist the group of building level personnel in selecting additional alternative strategies to implement if the problem persists.

At this point the parents should be notified of the referral, and the date and manner of this notification should be recorded on the district tracking form. Since no formal individual assessment will occur, parent permission is not required, but parent involvement is essential for a non-biased process. Invite the parent or guardian to participate in the screening.

The teacher initiates this step by presenting the referral form, with appropriate sections completed, to the building level committee. This committee then assigns the responsibilities for collecting screening data. Minimal data to collect at this point (before any additional action can be taken relative to the student's program) include:

a. vision and hearing screening
b. language dominance specification
c. academic functioning levels (both grades and the results of standardized academic testing)
d. socio-cultural screening
e. speech screening
f. health and physical screening
g. anecdotal observation data
h. alternatives tried and results
i. work samples from each alternative implemented
j. other information available or needed

All of this data is gathered and considered by the building level personnel responsible ("screening committee"); only when it is all present can Question 6 be addressed.

Great care must be taken in this step to assure that screening is comprehensive. Objective criteria should be adopted district wide, setting the limits of tolerance within which the data for a given student can be rated for some indication of "risk." Screening procedures can be every bit as biased as other assessment and decision procedures. For example, care should be taken to note that behavior which might be abnormal for the majority culture of the school is quite normal or accepted within the minority culture of a referred student.

Guard against collecting data "to support a referral to special education." This is virtually forcing a prediagnosis, which is insidious discrimination. Let the need for special education emerge naturally, and not be presupposed!

QUESTION 6: Does the screening data suggest the need for other alternative educational services? If the answer is "No," then record the fact on the district tracking form and terminate the process. If the answer is "Yes," proceed with Step 6.

STEP 6: TRY OTHER REGULAR EDUCATION ALTERNATIVES. The building level, or screening, committee may now draw on available regular education alternatives (bilingual education, Title I programs, remedial math classes, etc.) to determine one or more (preferably two or more) alternatives which could legitimately be tried in further attempts to resolve the problem.

In this step, a member of the building level committee records the prescribed alternatives, and the building level committee assigns someone to oversee the integration of the alternative programs smoothly into the student's overall program.

The building level committee authorizes the implementation of the prescribed regular education alternatives, and assigns the service delivery personnel to record periodic anecdotal observations of the student's behavior. Such data will be used by the building level committee to answer Question 7.

Since change of the student's location in school may be discussed and authorized at this step, the parent should be invited to attend the meeting of the building level committee. It will be necessary to obtain parental permission before changing the student's placement even though the change may be only for observation (assessment) purposes.

If the parent does not respond to the request for permission when a change of placement is in order, the school may wait for a prescribed period of time (e.g., 10 school days), then proceed with the proposed change without written consent. This procedure is used in some parts of the country, but is acceptable only if there is a school policy allowing for such action, and only if it can be shown that there is every reason to assume that the parent(s) received the notification and/or invitation to be involved. The assumption is that the lack of parental response constitutes tacit consent. This assumption is probably safe if the primary home language of the parents is known to be the same as that of the notification, and if it is known that the parents are sufficiently literate to read and understand that notification.

QUESTION 7: Does the problem persist even when alternative regular education alternatives are provided? If the answer is "No," then record that fact on the district tracking form and terminate the process. If the answer is "Yes," proceed with Step 7.

STEP 7: DISTRICT LEVEL REFERRAL (TYPICALLY FOR SPECIAL EDUCATION). At this point, resources at the building level have been exhausted as far as the personnel there can tell. Also, all possible regular education alternatives have been tried and have proved unsuccessful in resolving the problem. The building level committee now needs additional information in order to deal with the problem.

IT IS NOT UNTIL THIS POINT that the possibility of a handicap is considered as the cause of the student's problem. All that is reasonably possible has been done by now to assure the district that the student's problem is significant enough to warrant an indepth assessment.

This step consists first of all of a consensus by the building level committee that the referral should be made. In effect, the committee says, "We have exhausted all of the options available to regular education without success." The only option remaining appears to be the possibility of a handicapping condition interfering with the student's learning program.

Finally, all of the data that has been accumulated to this point is collected, attached to the district form provided, and forwarded to the appropriate district personnel.

At this point it is necessary to obtain the permission of the parent(s) or guardian for the comprehensive assessment that will follow. Federal regulations require that such consent fulfill certain conditions; it is easy to overlook such requirements as "informed" consent. The parents should understand what is to be assessed, how, and why, as well as what will happen or not happen as a result of the assessment. It is not enough to assume that because parents sign a permission they fully understand what they are signing. The parent(s) or guardian should become a full partner in the process of assessment to follow. The insight to be gained from such an involvement with the parents is invaluable in understanding the student.

QUESTION 8: Have all steps 1 through 7 been taken and is all of the resulting data on hand? If the answer is "No," go back and fill in the missing data or perform the required steps. If the answer is "Yes," proceed to Step 8.

STEP 8: MULTIDISCIPLINARY ASSESSMENT TEAM PREPARATION. This is one of the most important steps of all, and perhaps the most often overlooked. For a comprehensive assessment to be truly appropriate it must be a team activity, utilizing the expertise of as many disciplines as necessary (at least two are required by P.L. 94-142). In no case can this step be fulfilled by a single individual of any profession!

Ideally, the principal individuals (professionals, parent, and others who have a direct bearing on the case) should meet in what is sometimes referred to as a Preassessment Conference. At this conference, all of the available data is reviewed and a list of questions is generated. These questions, when answered, will provide an adequate base upon which to plan the student's program, given the problem behavior(s) indicated.

If the ideal isn't possible (no meeting of the team occurs), then at least a number of key personnel should review the data and assist in the generation of the list of key questions to be answered.

It is extremely important, at this point, to include sensitive members of the student's racial or cultural group in the formulation of questions. It is more important to have such a person involved at this step than in actually collecting the data to answer the questions, though that is sometimes very important also.

To be comprehensive, the assessment will address three general questions, and specific questions within these areas of concern. The three general questions are:

1. Is the student handicapped?
2. Is the student's problem caused by, or significantly complicated by, his/her handicap (if there is a handicap)?
3. Does the student need special education as the result of a problem which is due to his/her handicap?

If the answer to either of the first two questions is "No," the subsequent questions need not be addressed when special education is reserved for the handicapped. Ideally, however, all three questions could be addressed and an educational plan produced for each student whether he/she is found to be eligible for special education or not.

Where special education funds are restricted to educational problems of the handicapped, it is necessary to establish a student's eligibility in terms of one or more handicapping conditions. If a handicapping condition cannot be verified, then the student is not eligible for special education services regardless of how severe the "problem" might be.

Also, even when a student has been found to be handicapped, the problem may not be related to the handicap. For example, a student who is orthopedically handicapped and confined to a wheelchair might be having a reading problem that would exist even without the orthopedic handicap. In such a case, the student would not be eligible for special education services unless another handicapping condition is found to be causing the problem (e.g., learning disability). Where members of ethnic minority groups are concerned, such questions become critical. Minority group students are all too often declared eligible for special education on the basis of diagnosis of such conditions as mental retardation, learning disabilities, and emotional disturbance, when a sensitive assessment of their status would reveal that the so called "problem" behaviors are due primarily to racial, ethnic, linguistic, and/or related factors such as poverty, lack of opportunity to attend school, etc.

Therefore it is imperative to determine whether "symptoms" indicating a handicap may actually be normal characteristics for the culture of the student involved. The following questions should be asked:

1. What is the language proficiency of the student in his native language as well as in English?

2. Is there a difference in expressive language as opposed to receptive language between the proficiencies in these two languages?

3. Does the student demonstrate a lack of adaptive behavior in the home and community environment as he/she does in the school environment?

The professionals (or others) best suited to answer these questions should be listed. For example, "Is the student able to cope emotionally with a classroom setting?" might best be answered by a psychologist or psychiatrist, preferably a school psychologist. Or, "Since the student exhibits bizarre behaviors without apparent relationships to known stimulus, might there be a neurological dysfunction?" would perhaps be answered best by a neurologist, preferably a pediatric neurologist.

A multidisciplinary team formulates an assessment plan, consisting of the questions to be answered and names of individuals to perform various aspects of the assessment. This plan is attached to all of the data accumulated and Questions 9 through 11 are addressed in order.

QUESTION 9: Have all of the necessary questions been generated to provide an adequate basis for planning the student's educational program? If the answer is "No," then generate the additional needed questions. If the answer is "Yes," proceed with Step 9.

STEP 9: MULTIDISCIPLINARY ASSESSMENT OF HANDICAP. This is the step that has traditionally been accomplished by the "standard battery" of tests and little more. Assessment for the purposes of developing an educational program will be conducted in Step 11. Step 9 includes only that assessment which answers questions relating to the nature and degree of the handicapping condition that establishes the student's eligibility to receive services. It is imperative that both test based assessment and nontest based assessment be made to answer the assessment questions generated in Step 8. Since few if any tests have been validated for the purposes of determining the most common handicapping conditions, it is necessary to acknowledge the primary role that subjective professional judgment plays in diagnosis. This is especially true for conditions defined more or less by society rather than by the presence or absence of any physically observable symptoms (i.e., mental retardation, learning disability, and emotional disturbance).

There can be no "standard battery" type assessment, since the questions generated at Step 8 will be different for each student.

Steps 9, 10, and 11, then, consist of nothing more than answering the list of questions generated in Step 8. If other questions are raised in the process, answers to these questions become a part (or subset) of the questions already listed, and they are answered also as a function of the comprehensive nature of the Multidisciplinary Assessment in Steps 9, 10, and 11.

The principles of professional practice and the appropriate considerations regarding the use of standard and nonstandard assessment techniques should always apply. It should be kept in mind, for example, that P.L. 94-142 disallows any test or procedure that has not been validated for the purpose for which it is being used. For example, if an instrument is being used to assess a student to determine whether he or she is "mentally retarded" or "emotionally disturbed," then that instrument must have been validated for that purpose. It should be noted that very few of the widely used instruments have been validated for the purpose of determining whether or not a student is handicapped or needs services as a handicapped person.

The report of the assessment accomplished in Step 9 should include the questions raised in this area during Step 8, the names and credentials of the individuals assigned to answer the questions, the techniques and methods used, the findings in terms of the criteria for eligibility as a handicapped person, and any professional recommendations appropriate because of the handicapping condition, as well as additional questions to be raised or answered before completing either this step or the next two.

The report is then attached to the material already accumulated for the case, and Question 10 is addressed.

QUESTION 10: After the assessment performed in Step 9, is there sufficient evidence that the student is handicapped? If the answer is "No," then either additional questions must be raised and addressed by reiterating Steps 8 and 9, or the student must be assumed NOT HANDICAPPED, referred to Step 12, and recommended as ineligible for further consideration on a track leading toward special education for the handicapped. It is possible, of course, that the comprehensive assessment of Step 9 discovered heretofore unknown facts explaining the problem and allowing for its solution with no further intervention, or with additional regular education alternatives. But if the answer to Question 10 is "Yes," proceed to Step 10.

STEP 10: MULTIDISCIPLINARY ASSESSMENT FOR EDUCATIONAL IMPLICATIONS. This step has traditionally been overlooked. Basically, it is intended to collect data about the student's educational performance as it relates to his/her peers and in terms of the objectives for achievement for the district. For example, if it is normal in a given district for a sixth grader to be achieving on the fourth grade level in math, then a student who is achieving at that level, although he/she might be significantly behind a national sample, is in fact doing as well as could be expected in that district, for whatever reasons. Such a level of achievement could not then be used as evidence that a discrepant level of achievement exists between the child's mental ability and his academic achievement for the purpose of diagnosing a learning disability. Given the curriculum and educational opportunity in that district, the student is doing as well as his peers who have similar abilities. It is also necessary to consider the educational history of a student. It may be that the student is placed in the sixth grade on the basis of chronological age but has only been in school for three years of her life and is doing remarkably well to be achieving at the fourth grade level given the amount of exposure to formal schooling. That is, care should be taken not to assume that a student is suffering from some handicapping condition (most notably a learning disability or mental retardation) simply because of low scores on educational performance tests.

In this step the educational conditions surrounding the student, both past and present, are taken into account. Only by considering such educational conditions can we determine whether or not an existing handicapping condition is causing or at least supporting low levels of educational performance. The report of the assessment accomplished in Step 10 should include the list of questions raised in Step 8, the names and credentials of the individuals who have been assigned to obtain the answers, the level of educational performance of the student as it relates to the level of performance of peers on the same dimension (behavior, subject, etc.), and a statement of the degree to which the handicapping conditions found in Step 9 are affecting the student's level of performance.

It should be noted that only the I.E.P. committee can apply a specific handicapping label to a student, but the assessment performed in Step 9 should have found the presence or absence of handicapping conditions, without reference to a label, which could be significantly influencing the student's behavior.

The report is attached to all of the previously collected materials, and Question 11 is addressed.

QUESTION 11: Does the assessment data obtained in Step 10 supply sufficient evidence that the student's problem is educationally related to and supported by a handicapping condition? If the answer is "No," then, by most standards, the student will not be eligible for special educational services which are reserved for the handicapped only; this fact is recorded, and the case is referred to Step 12 (bypassing Step 11). If the answer is "Yes," proceed to Step 11.

STEP 11: MULTIDISCIPLINARY ASSESSMENT FOR EDUCATIONAL PROGRAMING. There should be nothing done in this step that relates to what the student's handicapping condition is or might be. That has all been handled in Steps 9 (for all handicapping conditions except LD) and 10 (for LD). In this step, the student should be assessed only in terms of where he is functioning with reference to the educational programs for which he is being considered. The purpose of this phase of the assessment is to determine what curricular modifications would be needed to enable the child to function in the least restrictive setting. Measurements of the child's educational performance and behavior against the demands of various local programs will provide valuable information for later decisions regarding placement in the least restrictive environment.

In the past, the purpose of this step has been poorly understood. Traditionally, the "standard battery" used to establish eligibility was also used as the basis for educational programing. In most cases, using such a standard battery is grossly inappropriate; the instruments have not been validated in most cases for purposes of educational planning. The classic example, perhaps, is the use of the Wechsler Intelligence Scale for Children as a basis for making eligibility decisions and for designing curriculum strategies.

Using an instrument for purposes other than what it was developed for and/or using it with populations other than those represented in the norm group can easily result in unfounded and biased conclusions.

Criterion referenced assessment materials, if congruent with the criteria of the actual program curriculum, can reveal exactly on what level a child is performing and can provide a valid basis for individual educational program planning. These tests, on the other hand, are not appropriate for diagnosing disabilities or determining eligibility for special education. Throughout Steps 9, 10, and 11, it is very important that the two functions of eligibility and programing be cleanly separated and that assessment techniques be used which are appropriate for each of these two functions.

It has been a common practice to place students found eligible for special education into THE special education class when, in fact, the program there was no more individualized than was the regular education program. Some districts even have a standard curriculum for all students classified as "mentally retarded." In effect, such a practice provides nothing more than a remedial program for students who aren't achieving up to the level of those whom the district has decided are "normal." In fact, the program isn't even a good remedial program because no attempt is made to determine the specific needs of each student nor to tailor a program especially for that student. "Mental retardation" is an arbitrary category with legal requirements that vary considerably from state to state and even from district to district. Students classified as mentally retarded vary as much as do "normal" children. There is no rationale for such a thing as an MR curriculum.

Assessment information gathered in Step 11 should address the questions related to specific levels of educational functioning as measured against the local curriculum posed in Step 8. Suggested remedial strategies that are likely to work should also be included along with the list of questions, personnel, techniques, findings, and recommendations described for Steps 9 and 10.

The report is attached to all of the material accumulated to date and is submitted to scrutiny under Question 12.

QUESTION 12: Have all of the assessment questions been answered to the satisfaction of the Multidisciplinary Assessment Team? If the answer is "No," either return to Step 8 for additional information, assuming more is required, or record the fact and terminate the process. If the answer is "Yes," proceed with Step 12.

STEP 12: PREPARE AN INTEGRATED REPORT. At this point the assessment data (including all of the data collected in Steps 1 through 11) must be integrated into a question and answer format readily understandable by every person on the I.E.P. committee, including the parent.

The comprehensive assessment report should present the case by relating the student's problem to the handicapping conditions, if any were found, and by discussing the influences, if applicable, of minority, ethnic, linguistic or cultural group membership. The report will serve as the basis for the discussion of the case in the I.E.P. meeting.

When such a report is ready, address Question 13.

QUESTION 13: Is the Assessment Report jargon free and understandable in that it communicates in simple, straightforward terms to all who will be present at the I.E.P. meeting? If the answer is "No," return to Step 12 for the necessary revisions in the report. If the answer is "Yes," proceed with Step 13.

STEP 13: SCHEDULE THE I.E.P. MEETING AND FURNISH THE PARENTS WITH A COPY OF THE ASSESSMENT REPORT. The I.E.P. committee meeting is scheduled in accordance with all required due-process considerations, including, in particular, notifying the parent that the meeting has been scheduled. It goes without saying that, if possible, the meeting should be scheduled at a time the parent is most likely to attend.

As in the preassessment conference (Step 8), it is very important that there be present at this meeting individuals who are sensitive to and thoroughly understand the racial, cultural, or ethnic background of the student. There are many state and federal regulations relating to the composition of the I.E.P. committee and to its role and function, so those issues won't be dealt with here, except to say that the makeup of the committee can, in large part, determine whether or not decisions will be biased. Expediency should not be the rule where a student's program is concerned. Time should be taken to convene the best committee possible at the most opportune time, and great care should be taken to assure that the deliberations of the committee are thorough and that they take into account all of the areas where biased placement could occur. To assist in this, Steps 14 through 17 present separate questions and procedures for the committee to take in assuring a nonbiased appraisal process.

QUESTION 14: Does the student appear to need special education? If the answer is "No," after all of the data have been gathered and are

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on hand, then there is probably no need to convene a full I.E.P. committee but simply to state that the student is not eligible. Instead, the case should be returned to the building level committee (Step 6) for additional consideration in regular education. If the answer is "Yes," proceed with Step 14.

STEP 14: SPECIAL EDUCATION ELIGIBILITY DECISION. This step and the next three (Steps 15 through 17) are taken by the I.E.P. committee in session. They are separated into four distinct steps to emphasize the importance of each one. They are also, in effect, ordered so that each succeeding step can be taken only upon the completion of the previous one.

First, the I.E.P. committee considers the integrated assessment report, comparing the findings to eligibility criteria for determining the student's eligibility as a handicapped student. This is an important step; at this point many biased labeling decisions are made; if not actually made here, they may be condoned or made official. Therefore, it is of utmost importance that the committee consider all of the issues surrounding the decision making process as it relates to culturally diverse students. It is often assumed that it is in the assessment that bias has the greatest chance of influencing the labeling of a student, but research has shown that the administrative decisions made at I.E.P. committee meetings are not significantly influenced by assessment data (Morrow, et al., 1976; Tucker, 1977). Other factors, including the forcefulness of personalities in the group, administrative position, and professional qualifications of various members are more influential. Great care should be taken to assure that every significant cultural factor is considered before assuming that test data support eligibility.

After the committee has thoroughly discussed the findings of the comprehensive assessment performed in Step 9; compared the results with eligibility criteria for various handicapping conditions; and considered all the racial and cultural factors that may have influenced the student's performance during assessment, the committee is ready to address the special education needs of the student. Here, again, the data in the integrated report are considered very carefully, especially as they give evidence of a relationship between the handicap (if there is one) and the educational need that is demonstrated by the assessment in Step 10.

A student is not eligible for special services simply because he or she happens to be handicapped. There are many handicapped students who do not need (or want) special education intervention. Special education for the handicapped has been provided for those problems in education that are CAUSED BY THE HANDICAPS. A student who is emotionally disturbed and is failing in school because he cannot cope with the structure of the regular classroom NEEDS special assistance in order to progress in school at a rate commensurate with his ability.

All deliberations regarding the eligibility decision should be carefully noted in detailed minutes of the I.E.P. committee meeting. This is necessary to establish that the committee did, in fact, consider all of the pertinent points relative to nonbiased appraisal.

Once it has thoroughly discussed the findings of the comprehensive assessment performed in Step 10 and compared the results with the ability levels that can be judged from the results of the assessment performed in Step 9, the committee is ready to address Question 15.

QUESTION 15: Is the student a member of a minority group or other unique population? If the answer is "No," record the fact in the minutes of the I.E.P. committee, and proceed directly to Question 16. If the answer is "Yes," the nature of the need as it relates to the handicap is recorded in the minutes and Step 15 is addressed.

STEP 15: ETHNIC AND CULTURAL CONSIDERATIONS. The final consideration that must be made when assuring nonbiased appraisal and placement of minority group students relates to specific cultural factors. Questions must be answered regarding the degree to which behaviors that appear to be related to handicapping conditions can actually be accounted for by cultural, ethnic, or linguistic factors. Whenever a student is a member of a population that is unique--e.g., different race, different background, different socio-economic status--individuals sensitive to the norms of that population should always be included (if possible) in the deliberations, both during the assessment phase (Steps 8 through 12) and in the I.E.P. committee phase (Steps 13 through 17). When this is not done, the chance is much greater that values and norms of the majority group will inadvertently be imposed as criteria in the decision making process. It is natural for us to look at the world through our own experience and values. It is only when we bring in individuals with different viewpoints that we are able to break through our biases, first to realize them and then to overcome them to at least some degree.

The I.E.P. committee should consider these factors, especially when dealing with the mildly handicapping conditions. P.L. 94-142 regulations require that the I.E.P. committee affirm that the signs used to indicate the presence of a handicapping condition cannot be completely accounted for by the student's difference in language, difference in culture, and/or lack of educational opportunity. If the behaviors indicating the handicap can be completely accounted for by any one of these factors, the committee cannot declare the student handicapped or place him/her in special education.

When the I.E.P. committee has carefully considered all elements necessary to verify the handicap indicated in Step 13 in terms of the student's language, culture, and educational history, Question 16 may be addressed.

QUESTION 16: Are eligibility decisions free of cultural bias? If the answer is "No," then return to the appropriate step and take whatever corrective measures are needed, working back to this question again. If the answer is "Yes," the committee is ready to move to Step 16.

STEP 16: I.E.P. PRODUCED AND APPROVED. At this step, the assessment data collected and integrated into the report to the I.E.P. committee are used as the basis for educational planning. All goals and objectives should be tied directly to data indicating a discrepancy, strengths that can be used, and weaknesses that need remediation. For example, if the problem behaviors identified throughout the assessment of a given student indicate that he/she has a math problem, then the I.E.P. should not be produced to remediate reading.

There is abundant literature describing how the I.E.P. is to be produced, including guidelines on the formulation of long range goals, short term objectives, and strategies for implementation, as well as timelines, location of services, personnel who will deliver the services and parental involvement. This paper is dealing rather with the general considerations that must be made in order to assure that the procedures are carried out in a nonbiased manner.

It is important to remember that the instructional and related services received by a handicapped student should relate only to the need of that student as caused by the student's handicap. In no way should the services be provided to remediate conditions caused by a student's previous lack of opportunity to learn. All of those conditions can be helped, in part by other programs, many of which are federally funded for the purpose; however, such services are outside the realm of education for the handicapped unless it is necessary to coordinate programs and responsibilities. It might be assumed that this consideration is irrelevant here, since the question was addressed in Step 14, but the subject may be passed over lightly at one step only to be picked up more thoroughly at the next.

The only problems for which an I.E.P. is required are those directly attributable to the student's legitimate handicap.

Where bias enters in this step is often in the equivalence in criteria for mastery of short term objectives and long range goals. In creating an educational program for a student, there are always assumptions about the student's potential. The ultimate expectations for the student, such as whether or not he is expected to finish high school and receive a regular diploma or a special education diploma and whether or not he is expected to live independently as an adult or need a sheltered living environment (e.g., half-way house) or institutional support all his life, can easily bias decisions and recommendations made at this step. Such assumptions should be brought out in the I.E.P. committee meeting and discussed freely and openly. Biases need to be realized and accepted as such, if there is reason to suspect that less than optimum expectations are present on the part of committee members. The details of these deliberations should be recorded in the minutes of the meeting.

The minutes of the committee meeting, and the specific objectives and goals of the I.E.P., should specify optimal expectations assumed for each student considered. This information is recorded on the district tracking form, and the specifics of the I.E.P. are generated and recorded. When such considerations have been dealt with, the committee is ready to proceed with Question 17.

QUESTION 17: Have all the necessary precautions been taken to insure that the student's educational needs can best be met by the provision of special education services? If the answer is "No," go back to whatever step has not been adequately addressed and review the data or collect data so as to be absolutely sure that the student's best interests will be in mind in the planning that is taking place. If the answer is "Yes," proceed to Step 17.

STEP 17: PLACEMENT FOR INSTRUCTIONAL AND/OR RELATED SERVICES IN THE LEAST RESTRICTIVE ENVIRONMENT. At this point, it is important to record the location within which the specified I.E.P. services will be provided. Since one of the ultimate results of the appraisal process is to place a student in a class or in a learning environment conducive to the implementation of his/her I.E.P., that location must be viewed as one of the primary validations of a nonbiased appraisal process (i.e., a nonbiased placement process). The law also requires, however, that students be placed in the least restrictive environment. If several placements emerge as equally conducive to learning, the least restrictive of these must be selected.

At this step, then, the student's actual program placement is indicated on the appropriate forms within whatever category he/she fits best.

The committee must address the problem of availability of facilities, resources, and personnel to carry out the services ordered by the I.E.P. The law does not allow for the nonimplementation of the I.E.P. simply because of a shortage of resources. While this is difficult to understand in areas with a perennial shortage of resources, especially personnel, it is how the law has been interpreted. So the question is, "What facilities, equipment, personnel, etc., are needed?" without regard to whether or not such are available. It would be completely unrealistic, however, to assume that this will change the existing conditions which limit the resources.

For example, the quality of the service to be delivered may be affected by the quality of the available personnel. However, if the quality of the special program is not inferior to the program available to students in the regular education program of the school district, it will probably be acceptable.

It is here, however, that considerations of nonbiased appraisal come into play. In no case should a student be assigned to a given facility, a certain teacher, or a specified program simply because that is the only place, person, or program available. Consider, for example, a student who is referred initially for all of the right reasons, when it is known from the beginning that there is only one placement available to all special education students--the "special education class." The fact that there has only been one placement alternative in the past should never be used to bias either the assessment or placement decision in the present or in the future.

While it is often supposed that biased placement is not a factor in personnel assignment, such has not been the case in many instances. To insure against biased personnel placement, data about which personnel are assigned to each student should be collected at this step. This is a difficult measurement concept to account for, but it can be done by simply listing all of the assigned personnel (as they become assigned for the first time), and then recording each case as a tally mark in the appropriate column by racial group, cultural group, etc., in the same way that tally marks are made for the least restrictive environment alternatives.

The committee considers each student in terms of the deliberations preceding this step and determines the most appropriate placement. The decision is made to implement that placement, the personnel are assigned, and the resources are allocated to carry out the program as specified by the I.E.P. These deliberations are all recorded in the minutes of the I.E.P. committee meeting, with the decisions reached. When this has been done, Question 18 can be addressed.

QUESTION 18: Have the parents approved the student's placement and the program as specified in the I.E.P.? If the answer is "No," go back to whatever step is necessary to take care of the problem causing a lack of communication or cooperation. If the answer is "Yes," proceed with Step 18.

STEP 18: PROVIDE INSTRUCTIONAL AND/OR RELATED SERVICES. At this step, data is consistently collected regarding student progress (or the lack thereof) in terms of the objectives stated in the I.E.P.

Bias at this stage might lie in the expectations that the instructional and/or related services providers have relative to the student. Consequently, some system of comparing the achievement of objectives across cultural groups would be helpful, and the data could be collected in terms of several such categories, e.g., more than 75% mastery within time projected, 50% to 75% mastery within time projected, 25% to 49% mastery within time projected, less than 25% mastery within time projected. Then each case could be periodically checked within one of those four categories to get an idea of whether or not a disproportionate number of some cultural or racial group was not achieving mastery.

A very important consideration at this point is that the objectives and criteria for mastery could be biased in favor of one or more cultural groups; if that were the case, an equivalent mastery might not be an indication of an unbiased process. The equivalence of criteria for mastery is a consideration that must be dealt with in terms of bias at the point of I.E.P. production in Step 16.

Once the student has been placed in the setting specified by the I.E.P. committee and the necessary data specified above have been recorded on the district forms, Question 19 may be addressed.

QUESTION 19: Can we tell if the student's progress is satisfactory? If the answer is "No," go back to Step 16, the production of the I.E.P, since all of the goals and objectives should be measurable over time. If the answer is "Yes," proceed with Step 19.

STEP 19: EVALUATE STUDENT PROGRESS. This step is the formal accumulation of data according to a specified district wide plan (e.g., every 90 days, annually, etc.). For each student, this plan might vary, and the specific times when such reports were due might also vary. But there should be reports AT LEAST ANNUALLY, since P.L. 94-142 requires at least an annual review of the I.E.P. The data should show whether or not the student is progressing as expected.

This step also includes periodic re-evaluation of the student's handicapping condition (at least every three years) to determine if the student is still handicapped and otherwise eligible for special education.

In terms of nonbiased appraisal, the idea here is to look at the length of time that a student stays in a given type of location as a function of progress made and his cultural group. For example, there could be outcome units of measure such as the following: moved up one or more steps on the LRE ladder within the reporting period; remained on the same step in the LRE ladder within the reporting period; dismissed from special education during the reporting period, etc.

The data from such assessment is used by the school personnel to evaluate the student's progress, his/her program and placement in terms of whether or not progress, program, and/or placement have been affected by the student's membership in a given racial, cultural, or other unique group.

Data collected in this step are recorded on the district tracking form and maintained also for use in continued or subsequent deliberations of the I.E.P. committee.

SUMMARY

It is readily acknowledged that any system can be abused. The nineteen steps proposed in this paper simply delineate specific procedures that, when taken seriously, will assist a school district in maintaining a nonbiased appraisal process with reference to special education placement. The system implies the use of many different individuals, with widely divergent social and racial backgrounds, rather than the use of one or two case managers who take every referral through from beginning to end, making all decisions, and getting all of the sign offs that are required to meet the letter of the law.

The paper has presented general procedures and concerns, for the most part. The specifics for each step would require extensive description; there is an extensive body of literature on the subject.

The best way for a district to use the nineteen steps concept would be to gather a select group of personnel who have responsibilities in the area of pupil appraisal and go over the steps one by one, noting the differences between the system now in place and the one suggested. Whether or not you implement the entire system as proposed by the nineteen steps, the process of going through the system will serve as a very helpful review of your district's pupil appraisal program.

The nineteen steps can be implemented without a district wide tracking system, but there is really no way of monitoring the degree to which the procedures are actually being carried out case by case unless such a tracking system is in place. In the event of a program audit by either the state department of education or by the Office of Civil Rights, data from these steps would be invaluable as backup for what is being done, or for supporting changes that have been made to correct biased situations that were found as a result. At a recent meeting of lawyers and special educators it was made forcefully clear that the best defense is a good offense. If you have a system which collects monitoring data in advance, even if the data don't present your program in the light you would like, you will be in a much better position to defend your program.

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DENVER FOX
6187 South Locust Street
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(303) 773-3880 (H)

June 26, 1980

To the Members of the Select Education Subcommittee of the
U.S. House of Representatives Committee on Education and Labor

Dear Honorable Members:

Thank you for this opportunity to provide the Committee with testimony regarding the implementation of PL 94-142 in the State of Colorado. Unfortunately, neither I nor my wife are able to appear personally, as I must work, and, since the school system in which we live only provides summer school to my handicapped child on three days each week, my wife is home caring for him.

There are many areas in which we could provide testimony regarding the implementation of PL 94-142. During the past several years we have gained intimate knowledge with the provisions of this act, both in attempting to gain the rights due our seriously handicapped son, and during my training by the State of Colorado as a hearing officer for appeals of decisions regarding this act. However, we would like to confine our testimony at this time to two areas which are inter-related, specifically, (1) the problems of top administrators in school systems who are not supportive of education for the handicapped, and, in fact, are openly hostile to such education, and (2) the effects upon the parents of handicapped children who, in attempting to gain the rights for their children supposedly afforded by PL 94-142, challenge, appeal, sue, and otherwise confront the bureaucratic systems of the public schools.

Top School Administrators not Supportive of Education for all Handicapped Children.

A very serious problem seems to exist in a number of school systems in the State of Colorado regarding those top administrators in the school system not supportive of education for all handicapped children. Some administrators, in fact, have openly stated that they believe it is not the schools responsibility to educate handicapped children. The effects of this attitude are, of course, pervasive in the specific school system and damaging to the education of handicapped children. Despite the intent of PL 94-142, and the provisions of the law, there is an inordinate amount of foot-dragging occuring at the highest levels within the public schools.

Rarely is there an attitude exhibited by these administrators of "How can we (the administration and the parents) truly work together to develop and implement exciting programs for our children." Instead, one frequently encounters attitudes developed perhaps in the 1940's and 1950's of "The most important children are the normal children, and the purpose of the public school system is to educate these children. Other agencies must deal with the handicapped, particularly the seriously handicapped."

The following are specific results of this situation:

1. There is little or no advocacy for the child by the school system. Instead, the parents (if the child is fortunate in having knowledgeable, aware parents) must assume the advocacy role for the child, advocating many times specifically in opposition to a rather large, and at times very scary, school system bureaucracy.

2. Those in the school system (faculty, other professionals) who are truly supportive of educating the handicapped, and who truly believe that all children can and should learn, find themselves torn between the dictates of their conscience, and the perhaps unwritten, but clearly delineated policies of the top school administrators that handicapped children do not really belong in the school system, and if there, ought to be afforded as little as possible.

3. And, ultimately, the child suffers, along with his family. Which brings us to our second area of testimony, what happens to the family if they want more than the school system will provide (willingly).

The Effect Upon Parents who Challenge School System Bureaucracies

A recent report by the Carnegie Commission (The Unexpected Minority: Handicapped Children in America), as summarized in the May, 1980, issue of Phi Delta Kappan, makes specific reference to the roles and problems of parents in dealing with school system bureaucracies.

Statements include:

" Even with the protection of PL 94-142, schools can still ride roughshod over parents' rights."

" . . . educators too often see the handicapped as 'perpetual patients' resigned to a limited world. Defined from childhood by what they are not -- not able-bodied, not achieving at grade level, not well-adjusted -- disabled children carry a history of learned inferiority."

"Schools often claim that the question of a child's educational needs is 'far too complex to be dealt with seriously by a layman,' . . . as the professional sees it, the parent's role is not to evaluate the quality of the service provided but to make the most of the opportunity provided by the service."

The report calls for "A more active parental role in education, . . ."

Therefore, for many parents, there is a significant divergence between the expectations of the school system for parents and the role the parents expect and desire to have. Additionally, there is the previously mentioned problem of the parent desiring more from the system than the system desires to give.

What happens, then, if a parent is active for their child, and does challenge the systems for better services?

In our experience a number of things happen to parents. These include:

> FEAR. The school system has many ways in which control can be had over a parents' child. We personally know of statements made to "bothersome" parents to control their behavior by the school system. Specific examples include: "Well, you know, your child doesn't have to be placed in this program (when the parent wanted the child in the program)." And, "This family moved to this county just to be troublemakers. Why don't they go away." Or, "We have a whole file on you parents."
>
> In fact, it is with a considerable amount of trepidation that this testimony is supplied to this committee.
>
> FATIGUE. Most parents of seriously handicapped children are fatigued simply from the extra amounts of work, effort, financial strains, and other serious familial consequences of raising a seriously handicapped child. To add to this the strains associated with staffings, appeals, letters, court appearances, isolation from others, and related other problems may simply be too much for the family and may result in a total breakdown within the family.
>
> WITHDRAWAL. Faced with little or no success after attempting to secure what is thought needed for the child, and fearful and fatigued, parents may simply withdraw from the situation, rationalizing that at least their child is not being injured by poor teaching practices this year, and 'please be thankful' that there is any kind of summer program being provided at all. The parent simply resigns him/her self to second rate services in order to avoid further confrontations.

There is much more that could be said. However, over three hours have already gone into this letter, and our family needs us.

The basic problem: How do you change the attitudes of top administrators so that they become activists for the enforcement of the law (PL 94-142) rather than finding as many ways as possible to thwart the intent of the law?

Why does the solution to these problems have to fall back upon the parents and families of handicapped children who are forced, in desperation, to file challenges and lawsuits against systems and states, and as an end result, suffer additional harm within the family so desperately needed to provide support for the very handicapped child for whom the lawsuit was filed.

Thank you for accepting this testimony. It is our fervent hope that some solution better than continually forcing parents of handicapped children into the role of plaintiffs against school systems and states will be found by this committee. We can offer you none except to appeal to the minds and hearts of those in top administrative positions. Won't you have a change in heart? Didn't you enter education because you wanted to see each and every child fully developed. Isn't the development of each person the ultimate goal of education?

Yours very truly,

Denver C Fox
Denver C. Fox
Doctor of Education
Parent

Nora Palmer Fox
Nora Palmer Fox
Registered Nurse
Parent

PREPARED STATEMENT OF MR. AND MRS. LEIBROTO GARCIA

Our son Steve Garcia is a student at Oakville High School, Oakville, Missouri. He is handicapped by Specific Learning Disabilities as evaluated and diagnosed by Special School District of St. Louis County, at age seven. His I.Q. 125.

Now at the age of eighteen Steve has been reclassified as a sophomore again! The schedule arranged for him will never lead to a High School Diploma or G.E.D. although he is and has been in Special Education in the regular school he has little to show for it (except pain). He cannot even get into the South County Vocational School because he is Learning Disabled. They use the G.A.T.B. test. I believe this test discriminates against the SLD child. Someone needs to do an in-depth investigation of the discriminatory practices that our Special School District is involved in. The things that they do under the guise of education is a crime. How can you, who do have the power to intervene let these crimes go on and on? What can parents do? We have been at this for 12 long years. We have yet to find the answers that will help our Steve get the Compensatory education that he needs. What in Heavens name is happening to all the Steves out there???

The I.E.P.s designed by Pub. L. 94-142 to guarantee an appropriate education has been turned into a joke by the staff including Mr. Tom Smith, Dr. James Harmon, itinerant teachers etc. etc. Few if any regular teachers know how to teach our handicapped kids I am beginning to wonder if they can effectively teach our normal children? I doubt it.

When teachers such as Mo D. Schuman, my son's "Special" teacher can say to him "A High School Diploma is just a piece of paper it doesn't really matter. We are in Deep Trouble. Our laws mean nothing to these kind of people. (Pub. L. 94-142 Sec. 504) and they number thousands. Few if any caring and concerned teachers are left.

We as parents of Steve Garcia know that he is and has been discriminated against because of his handicap. He has been denied an appropriate and compensatory education. Special School District is now waiting for him to drop out. (Pushed Out).

We are tax payers and you and I know there is a lot of money in handicapped education. What has happened to the money that was supposed to be used for Steve?? He didn't get it!! That is for sure. All he got was a seat in the back of a room for 180 days. How many hours of education did he receive? I will tell you one hour per day if he's lucky. (160.041). The minimum school day consists of six hours.

"160.041. 1 The "minimum school day" consists of six hours in which the pupils are under the guidance and direction of teachers in the teaching process: except that, if any school is * * *"

My husband and I will be waiting for your reply. Would you please send us a copy of the "Findings" from this meeting. There is no doubt in our minds that one of these hearings should be held in Our Troubled St. Louis County. Give us a chance to participate in person please.

1430 Brady Street
Helena, MT 59601

November 20, 1980

Honorable Paul Simon
Subcommittee on Select Education
House of Reapresentatives
Oversight Hearings on P.L. 94-142
Washington D.C. 20515

Dear Mr. Simon:

I am writing this letter, which I would like made a part of the permanent record for oversight hearings for PL 94-142, to tell you how important I feel this law is for the education of our handicapped children.

I think the parents role in the I.E.P. is a vital part of this law and should be emphasized more.

I feel a part of the law that is vague and should be covered better is when mainstreaming, who is the coordinator to get the team together to formulate the I.E.P. Regular education teachers do not all know about the P.L. 94-142 or the I.E.P. so someone in special education needs to inform them along with the parents so they can come to the I.E.P. meeting prepared.

I have read some articles about teachers groups wanting to cut parents out of plans for educating the handicapped. We cannot let this happen as it is the parents who know the most about their children and without their input it would be impossible to write up an effective plan. What these children do the whole 24 hour day has to be taken into consideration to write a program that will be most beneficial to that child and who is that child with the biggest share of that 24 hours---the parents.

I have heard lots of talk about the budget cuts that are going to take place with the new Administration in January. We can't let this happen--there are too many people who would be neglected in every way if health and welfare budgets are cut, and we especially don't want the handicapped children's education to be one of those places appropriations are cut.

Sincerely,

Judy Gardner

Judy Gardner

MAY 6 1980
MAY 5 A M

missouri
developmental disabilities
protection & advocacy
services, inc.
211b metro drive
jefferson city, missouri 65101

April 30, 1980

The Honorable Paul Simon
Chairman of the House Subcommittee
on Select Education
227 Cannon House Office Building
Washington, D.C. 20510

Dear Representative Simon:

As Chairman of the House Subcommittee on Select Education please be encouraged to work toward ensuring that the Department of Education be responsive to full implementation of PL 94-142.

As Director of Missouri Developmental Disabilities Protection and Advocacy Services, I would like you to be aware that over 60% of our individual cases are involved in advocating for appropriate educational programs and services. This indicates there is a major breakdown in implementation on both the local and state levels.

I encourage you to address this issue as the Department of Education is developed so that the needs of school-age children having a special education need can be effectively met.

Sincerely,

Janice Gentile

Janice Gentile
Director

JG/ch

phone: (314) 893-3333
toll-free: (800) 392-8867
"equal opportunity employer"

1836 Walace Road
Library, Pennsylvania 15129
August 29, 1980

Gary J. Makuch, Ed. D.
Director, Bureau of Special Education
Box 911
Commonwealth of Pennsylvania
Harrisburg, Pennsylvania 17126

Dear Dr. Makuch:

The purpose of this correspondence is in regard to the treatment of hearing impaired children to attend DePaul Institute in Mt. Lebanon, Pennsylvania. As you requested we have noted our parent's group reaction to your response of July 30, 1980.

After our two meetings with you, the last of which was attended by local intermediate unit personnel, we had hopes we might be on the road to some kind of meaningful communication. We noted from legislators, parents, and others of your response to them that contact was made with us. You told them while no instant solutions were achieved, some degree of understanding and respect was achieved and communication channels were established. We put aside comments from many who said, "State officials and intermediate unit personnel will profess to be cooperative officially but will continue to avoid dealing with the issues. They hope to wear you down while your children and parents suffer continued abuse."

We had no illusions of any quick solutions. We have, however, been astonished that our efforts to conciliate and participate in solutions have resulted in increased actions against our parents and their children. The Allegheny Intermediate Unit has even taken action to turn our cooperation against us.

Is is now obvious to us that we cannot expect meaningful relations with local intermediate unit personnel. Newspaper accounts, transcripts of due process hearings, advocate complaints, expressed parent concerns, legislative inquiries, etc., justify enough of a basis for a full scale investigation. A prima facia case and more points the need for an immediate in depth accounting into the abuses pointed to in the attached response. We call for such an action to include public hearings to bring an end to the abuses in special education in this part of Pennsylvania. To be meaningful, this investigation must go to the roots of the concern. All parties must be contacted and assured that no retaliation will be taken against them.

Our concern goes beyond the treatment we are receiving from the hands of local intermediate unit administrators and their representatives. You will note from our responses that we are deeply concerned with some policies and practices from your office. We hope you will take the time to research the points we have raised and by doing so, go beyond surface reaction.

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The overall inaction to deal meaningfully with even the serious abuses leaves us no recourse but to expand our request for assistance and to work with other groups who have expressed similar concerns. As we have repeatedly informed you, we had hoped this situation would not be taken lightly and action would be taken rather than mere acknowledgment of concern.

Sincerely,

Joseph M. Grkman

Joseph M. Grkman
President, DePaul Parents Group

rm
Enclosure

cc: DePaul Parent's Committee Leaders
DePaul Institute
Dr. William Penn
Dr. Edgar Holtz
Dr. Roger Meehan
Dr. Harold E. Dyer
Mrs. Joan Kost, Children's Rights Coordinator

DePAUL PARENT'S ACTION GROUP CONCERNS

Parent's Concern

1. Mainstreaming is our goal but it must be accomplished in a professional manner without the dumping of children into programs just because the programs are there.

Makuch Reply

I certainly agree that children should not be dumped into programs for any reason.

As I have indicated to you on other occasions, our efforts are directed to implementation of the least restrictive environment (LRE) provisions of P.L. 94-142. In addition to the fact that mainstreaming is not mentioned in the federal law or regulations, I believe the term has a much more limited meaning. However, we have not revised our State Board of Education regulations to reflect the LRE concept. Consequently, it still contains a section on mainstreaming. As a means of preventing dumping of children into programs, the regulations contain the following language: §13.9(b). "If mainstreaming is recommended, specific supportive services, including staff orientation, necessary for appropriate education and/or training of persons placed in the mainstream shall be provided in accordance with the nature of the placement."

While I am not sure what is specifically meant by "a professional manner" I can certainly agree with the intent it suggests. I believe that the enclosed document, Placing Handicapped Students in the Least Restrictive Environment: A Model for Decision Makers, provides considerable direction on how to place children in a professional manner. This document has been distributed in quantity to all 29 intermediate units.

Parent's Response

We are not alone in observing the unprofessional manner in which handicapped children are placed into supposedly least restrictive classes. Three parents stated in a July 17, 1980 Pittsburgh Press article, "What we, as parents of children who have been attending the Cumberland Hills School see, is the 'dumping' of our children into classes with regular education teachers who have neither the proper training nor the preparation needed to educate our children."

We need more than paper compliance. Action must be taken to see that the actual educational needs of the children are being met. It is not satisfactory for us to be told one thing, and then for another to be implemented. We feel your department should follow through on these matters.

Parent's Concern

2. We expect these programs to be of a quality nature. To ask us to move from a quality program now, to classes in the intermediate unit that may improve down the road is not desirable.

Makuch Reply

It is the responsibility of the school districts, intermediate units and Department of Education to provide a free appropriate public education for all exceptional children. I am well aware of the fact that an appropriate program may not be viewed as the best, the most appropriate, or a quality program. However, under current law, both state and federal, there is no legal right to receive or obligation to provide the best, the most appropriate, or a quality program. This does not mean that we, parents, teachers, and administrators should ignore the issue of quality. In fact, the department's effort in school improvement is directed towards establishment of a process whereby each community will identify and implement strategies to improve the quality of education in every public school building in the Commonwealth. It is my opinion, however, that the issue of what constitutes quality will be debated forever. The determination of what constitutes a quality education is subjective, constantly changing and specific to each individual child.

It may be helpful to all concerned if, in addition to properly trained and certified staff, adequate supplies and materials, proper facilities, proper staff/pupil ratio and other basic requirements that would constitute an appropriate education program, you could cite specific examples of other considerations which would make an appropriate program a quality program. Unless these considerations are unreasonable in terms of cost or application to the program, I would expect that the intermediate unit would make every effort to incorporate them into their programs.

Parent's Response

We take strong exception with your statement, "However, under current law, both state and federal, there is no legal right to receive or obligation to provide the best, the most appropriate, or a quality program." While you mention, "This does not mean that we, parents, teachers, and administrators should ignore the issue of quality" the issue of quality is being ignored. We are repeatedly told that as long as an "appropriate program" is available our children must leave DePaul even if DePaul's program is better for the children and even if it is less expensive for taxpayers.

We do not believe that the Federal Law (94-142) denies our children the right to a quality program or to the best that is available, especially when the cost is less expensive. In correspondence dated July 8, 1980 from Congressman Paul Simon, Chairman of the Subcommittee On Select Education, Committee on Education and Labor, House of Representatives, Congress of the United States, he states, "Under no circumstances does the law suggest that a child be placed in a program that is less than adequate for his optimum educational progress." We note Webster defines optimum as "the best or most favorable degree, condition, amount, etc." Federal Congressman Doug Walgren, from this area, personally spoke before our parent's group and supported our understanding of PL 94-142. The January 11, 1980 decision in Federal District Court also supports our point. In this case Judge Ballentine stated that, "The court is persuaded that the intent of PL-94-142 is to furnish the optimum in the way of education to those whom nature has dealt less than a full hand." Again we see the word optimum. The judge flatly rejected the concept that an acceptable program was appropriate when a better one was available. He stated the "most effective" program was the "appropriate" one. Even the federal document, mentioned in item 5, you recently sent us quotes the point .... "To find the most appropriate placement for the child."

As to the point of what constitutes a quality education, we respond that we are refused from entering testimony even in due process hearings relating to quality programs. We recognize the subjective nature of any term and are willing to have this issue viewed from an independent multidisciplinary team approach. To follow the current philosophy of dismissing a discussion of it and not have it enter in at any step in the placement of our children, is unacceptable. If you, and others mean what you say that we must strive for quality, then let us bring the issue out of the dark corner it has been pushed into.

Parent's Concern

3. We ask that the intermediate unit personnel follow the concepts our parents have been told in written replies from Secretary Scanlon and Special Education Director, Dr. Makuch. Parents and their children's present teachers should participate in placement decisions also.

Makuch Reply

I would expect the intermediate unit to comply with this condition also.

Parent's Response

We appreciate your agreement with our third point and request action be taken to see it is implemented. To insure there is no misunderstanding we reiterate examples we have already given to you. In a letter to the editor in the May 22, 1980 Pittsburgh Press it was pointed out the intermediate unit attorney stated the following relating to you in support of evidence a parent wanted to enter in a due process hearing - Dr. Makuch "has no more jurisdiction here than the man in the moon." As the article further pointed out the parent was stopped from submitting letters from State Secretary of Education, R. G. Scanlon stating "together parents, district, intermediate unit and private school staff should decide on the most appropriate education program for each youngster" and that "the best possible program or the most appropriate program are ideals which everyone should be striving for in all educational settings."

You have written to a number of parents stating that "Parents and professional educators of the hearing impaired (the child's present teachers and the teachers in the proposed program) must sit down to decide what the child's needs are and what programs are available to meet the child's needs." The intermediate unit attorney, referred to in the preceding paragraph stated in a hearing that it was sufficient for the School District and intermediate unit to effect a placement change from a simple records review and not even a complete one at that. He pointed out to the Hearing Officer that it was not even necessary to see the child involved. As recent as August 19, 1980 you confirmed this point verbally to one of our parents as did Dr. Roger Meehan on August 23, 1980.

There appears to be repeated contradictions on what we are told in writing and what we are informed of verbally. The federal policy paper from the Special Education branch you mailed us states on Page 30, "The legislative history makes it clear that parent's must be given the opportunity to be active participants in all major decisions affecting the education of their handicapped children."

Many IEP's are currently being done by the Allegheny Intermediate Unit without the involvement of parents, the present teachers of the children, and other professions most knowledgeable of the children. Current decisions on the placement of handicapped children continue to be made unilaterally by the Allegheny Intermediate Unit.

Parent's Concern

4. The intent of P.L. 94-142 was to serve those with the greatest need first. Programs for the hearing impaired have been established in the Pittsburgh and Allegheny County and surrounding areas by the intermediate unit where a high quality program was and still is in effect at DePaul. We recommend moving those IU programs to other areas of the state where they are most needed. Dr. Meehan, from the IU, pointed out "there are estimated to be 6,000 underserved special education students throughout the state."

Makuch Reply

P.L. 94-142 identified as first priority children all those who are not receiving any education at all. I believe that in the State of Pennsylvania all school-aged persons have access to a free public education program. Second priority children are those receiving an education albeit not an appropriate education. The latter group is considered to be the "underserved" population. Two years ago the department suggested that the greatest need was in the area of learning disabilities and emotionally disturbed. Consequently, we directed intermediate units and school districts to concentrate on programs for these exceptionalities. Aside from that particular direction however, it is the business of each intermediate unit and its member school districts to determine the program priorities for their area. It is important to note that children served in segregated environments who could be served appropriately in an integrated setting are part of the underserved population. In any event, the programs for the deaf in Allegheny County or any other program cannot be "moved to another area of the state".

The reason being we cannot move the program without the money and we believe it would be inappropriate, if not illegal, to do so.

Parent's Response

We understand that all the programs for the hearing impaired in this area cannot be moved out, nor do we ask for that. We ask that the State exercise their responsibilities to maximize the use of special education monies in Pennsylvania. We do not ask for anything that is illegal or inappropriate. If anything, we ask that PL 94-142 be implemented in the manner it was intended. We point to the comments of Dr. William Penn, Pittsburgh Intermediate Unit Director, in his statement aired on July 23, 1980 on the KDKA-TV news, Channel 2 "Learing to Learn" series on PL94-142.

Dr. Penn was asked, "How is the law working here in Pittsburgh?" He replied, "I don't think it's a question of whether it's working or not. It's whether the law is workable. Decisions are being made and demands made down at school districts and units have escalated to the point where you do not have the resources either of personnel or financial. Only time will tell whether or not the federal government will live up to their obligation to fund it appropriately. Then we can say whether it's working or not."

You state you "cannot move the program without the money." Dr. Penn and Dr. Meehan point out the need for monies if we are to receive quality programs. Here we are at DePaul with a top quality program that is less expensive than at the intermediate units that would seem to answer solutions all around.

In an audit conducted within the year for Allegheny Intermediate Unit No. 3, we find the cost for a hearing impaired child to be over $2,000 per child per year more than at DePaul. The savings to the taxpayer goes far beyond even that figure if children remain at DePaul since that $2,000 figure does not even include the expenses the intermediate unit is permitted to charge beyond standard costs. DePaul does not have that luxury. We are not asking for more money. When a parent tried to bring this point out in a due process hearing, the intermediate unit attorney succeeded in getting the Hearing Officer to concur in not even hearing the testimony.

We believe it is unlawful for the intermediate units to continue to expend monies to duplicate services in the hearing impaired program that for years have been and can continue to be provided more cost effectively and with higher quality at establishments such as DePaul. The intermediate units continue to develop hearing impaired programs, uprooting and forcing deaf children (already successful in other programs) into intermediate unit programs while other children such as learning disabled and emotionally disturbed remain with no services. A July-1980 Pittsburgh Press article brought this point out concerning parents in this area who filed a charge for the failure to identify and evaluate learning disabled children and establish quality programs for them. We understand you met with these same parents on August 25, 1980 at which time they pointed out similar concerns.

Parent's Concern

5. The specific needs of hearing impaired children in formulating IEPs must be documented. Present IU philosophy is to so generalize IEPs that the specific needs of the children are being overlooked.

Makuch Reply

In partial response to this item I am enclosing a recently issued federal Office of Special Education policy paper on IEPs. I would direct your attention to page 21. I think it is quite clear that the IEP is not intended to be lengthy or detailed. We, at the state level, have been severely criticized by many persons across the state for requiring too much specificity in IEPs. I am enclosing for your information a copy of our guidelines for writing IEPs.

In spite of, or because of the above, it still remains that the IEP must be directed to the individual needs of each child.

Parent's Response

We have reviewed the contents of the Federal Office of Special Education policy paper on IEP's you sent us. It is, of course, necessary to review the entire contents of this document to place the federal position in perspective.

In no way do we believe PL 94-142 or this document means that IEP's are to be written so generally as to overlook the educational needs of handicapped children, yet this is occurring in the intermediate units here. We note the document states ".....The IEP must set out the specific special education and related services to be provided ....". The document points out that for children with more severe handicaps the IEP's "Would be more comprehensive and cover more of the child's school program than if he/she only has a mild handicap." Children at DePaul have a serious hearing loss that could not be constituted as being a mild handicap. Several have additional handicapping conditions besides being hearing impaired. We also note the federal policy paper states the "IEP for an individual handicapped child must include all of the specific special education and related services needed by the child......".

At the Lydon due process hearing the intermediate unit attorney pointed out to the Hearing Officer that the testimony of a DePaul teacher could not be considered. His point was that the needs of one of our parent's handicapped children could not be considered since the IEP did [illegible]t specifically point out these needs in depth. The intermediate unit [illegible]lls us to generalize IEP's and then uses this against us in hearings [illegible] justify a limited program for our children in their proposed place[illegible]nt change. We, as parents, sat through this hearing and observed intermediate unit professionals going along with the concept of their attorney in refusing to recognize the legitimate needs of a handicapped child. They did not question the truth of the needs but challenged the right of those needs to be considered since they were not spelled out in extreme depth in the IEP. Such actions are ludicrous.

An IEP developed by guidelines such as yours "....... Not intended to be lengthy or detailed" must not be used as a main criteria for an educational placement, as is now such the case in this area.

Parent's Concern

6. Personnel in present positions in the intermediate units dealing with the DePaul parents have demonstrated a failure to communicate in an open, sincere, and considerate manner. Respect and trust in what these people have told us has reached a low point. It is recommended that others with a greater ability to enhance trust and confidence be brought in contact on a regular basis with parents.

Makuch Reply

I think that Drs. Meehan and Holtz agreed to determine the extent of this problem and to take appropriate action to rectify it. I strongly support this effort on their behalf and will continue to expect that they will monitor this situation.

Parent's Response

We have not seen any improvements in this area. Regrettably there has been even further deterioration, if anything. Since our meetings we have given you and intermediate unit administrators further examples of abuse. Now parents are becoming afraid of not only giving the names of the offenders, but are alarmed at describing the instances even to us since we are passing this information on. They fear the complaints can be traced back to them from the descriptions of the incidents with a resulting negative impact on their child. In one of the more recent cases a parent was screamed at over the phone, told DePaul was taking illegal actions, and that the parents were going to have legal action taken against them. These are not isolated cases and demand aggressive action.

Parent's Concern

2. Efforts to influence parents to change placement for their handicapped children through threats, harassment and intimidation must cease. This is our highest priority item.

Makuch Reply

Such behavior is intolerable and must be dealt with swiftly and firmly. This would also be my highest priority issue and I think that of the intermediate unit as well.

Parent's Response

It is difficult for us to conceive that any one person in intermediate unit #3 could have such a negative impact on so many of our parents either directly or through their dealings with us through school districts without the support of other key personnel. There is a growing belief, therefore, that high ranking AIU #3 people are not taking the DePaul situation seriously, are making a token effort concerning this matter, and may not seek to meet the spirit, intent, or even the legal obligations of PL 94-142.

Parent's Concern

3. The oral/aural method of instruction must also be made available to hearing impaired children who can succeed in this approach. This issue is vital among our concerns. We point to the January 11, 1980 decision of Judge Ballantine in Federal District Court of the Western District of Kentucky when he made it clear that the transferring of a successful oral hearing impaired child to a simultaneous program would not be considered appropriate.

Makuch Reply

The determination of which method of instruction is appropriate for a given child is an individual matter. The Kentucky decision was based on the individual merits of that specific situation and is not generalizable to all or any other similar cases.

I would expect, however, that any change in instructional methodology would be based on a full and proper evaluation of each child's ability and educational needs.

Parent's Response

To force the transfer and require hearing impaired children to learn sign language when they are successful in an oral program is unacceptable. How could anyone believe in the concept of a least restrictive environment and at the same time force successful oral hearing impaired children to depend on sign language? We acknowledge that not all children will be successful in an oral program and therefore, do not point to any one particular method, but only to that which is the best for the child.

The Federal District case in support of these points provides us judicial guidance on the intent of PL 94-142 and cannot be unilaterally disregarded. We are particularly disturbed, therefore, by your logic that the Kentucky case cannot even be viewed in light of "similar cases." If this is truly your belief, we must question your willingness to follow the spirit and intent of PL 94-142.

Parent's Concern

9. The terms "mainstreaming" and "least restrictive environment" should not be used in a narrow and misleading manner. We concur with Dr. Meehan when he stated in the Pittsburgh Press on June 19, 1980 that "simply uprooting the youngster from his current school is not the law's intent, because the student's present learning situation could be the least restrictive environment." LRE must relate to the needs of each specific handicapped child and not a hierarchy of placements that arbitrarily place a child in a program that is not sensitive to his or her needs.

Makuch Reply

As stated in response to No. 1, I think we should refrain from using the term mainstreaming all together, because it is too narrow. I think that the document referred to in No. 1 also addresses the concern that decisions be made on an individual basis.

Parent's Response

We concur that decisions on handicapped children should be made on an individual basis. This is not, however, being done in a growing number of cases. The intermediate units are doing one thing on paper and another in practice. We honestly believe this in large part is due to pressure from your department. As wrong as it may be, it appears the intermediate units are negating their responsibilities in order to deal with the pressures from your office to meet statistical needs.

The Allegheny Intermediate unit has as much admitted to the need to force placement changes without considering the subject of a quality program as a result of this pressure. The Pittsburgh Intermediate unit has openly stated that they reject such pressures without the necessary funding to insure quality programs. They, however, need further improvements in their services especially with the need to provide oral programs.

What we see is efforts by your office to concentrate too heavily on a strict statistical analysis of what is occurring in special education. Your department's approach seems to be that more and more children must be placed in the intermediate unit programs each year regardless of whether quality programs are available for them, or regardless of whether the children are ready. This is not just our opinion. We have this impression from intermediate unit people, and from other parent and teacher groups concerned with other handicapping conditions. There have been a number of newspaper articles in the Pittsburgh Press and Post Gazette that point to this growing concern. In a July article, for example, three parents not connected with DePaul Institute states, "It is apparent that statistical compliance is more important to the department than meeting the individual needs of the students."

When we pointed out this was a growing problem, the AIU leadership told us we alone were expressing concern and others did not have similar difficulties. We were led to believe we were over-reacting and were not aware of the big picture. Parents and/or teacher groups from Pathfinder, Cumberland Hills, Middle Road School, Western Pa. School for the Deaf, Pittsburgh Hearing and Speech, Mt. Lebanon, and others have been in contact with us over similar concerns. KDKA TV-2 ran a five day series on prime time relating to this concern. We sent you a tape recording of this broadcast. We now ask ourselves if key officials, especially in AIU #3, can be relied upon as to their credibility or is it simply a lack of their being knowledgeable in what is going on in their areas of responsibility. If we speak bluntly, it is out of frustration that we have from trying to be calm while our children suffer.

Parent's Concern

10. The IU concept that since their program is state approved, that program is automatically appropriate for each handicapped child is unacceptable. What is appropriate for one hearing impaired child may not be appropriate for another hearing impaired child.

Makuch Reply

The key phrase is "automatically". I agree that no program is automatically appropriate for a given child. However, the degree of modification of that program to meet each child's needs will very considerably. It is possible for some child after a full individual review of his or her educational needs that little modification of a given program will be necessary.

Parent's Response

The real needs of the children are not being fully considered. The intermediate units are not weighing the thinking of the parents and do not even see the need to seek the counsel of the professional teachers who have worked with our children for years. Rather than viewing the children's needs, the intermediate units are looking to find children to fit programs they have established. The manner in which they go about making placement decisions makes it clear to parents that the intermediate units have little concern with the educational needs of our children. They point out to us they have a program; it is state approved, and so our children must go to it.

One such example is shown in a letter from the Pittsburgh Public Schools to Mrs. Silvio that does not relate to the needs of her child but simply to the fact that a program is available. In the Secretary of Education's opinion dated June 6, 1980 on the Silvio case, he required modification of the Pittsburgh District school program for the Silvio child. Here we have a highly successful oral child being forced into a simultaneous program where she will be exposed to sign language. When the Pittsburgh School District was questioned on their ability to provide the needed modifications required by the Secretary of Education for the Silvio child, they simply send a copy of the Pittsburgh Public School Summary of Programs for Deaf Pupils and told Mrs. Silvio they have an appropriate program. The Summary states, "Total Communication, a communication philosophy which employs speech, speechreading, amplification, sign language, and any other channel that enhances communication, is implemented....." The Total Communication system, which is more aptly referred to as Simultaneous Communication since children are required to perform a number of communicating skills at one time, is also referred to in the duties of the speech consultant in the Summary.

Parent's Concern

11. The IU should refrain from forcing parents to take an adversary role. Rather than encourage parents to go to due process, they should be prepared to demonstrate they took all available steps to avoid such an action. The initiation of due process should signal a failure on the IU's part to be responsible administrators.

Makuch Reply

While I agree with the first two sentences in this item, I must relate that it has become a Catch-22 situation for the State of Pennsylvania. We have long emphasized that intermediate units and school districts should make every effort to work things out with parents before going to a hearing. However, we have been cited for noncompliance by the Office of Civil Rights and the Office of Special Education for denying or delaying parents' rights to due process by taking such a position.

I strongly disagree with your last sentence in this item. The due process procedure is a parent protection provision that can be evoked when agreement cannot be reached. It is inevitable, in my judgement, that the procedure of developing 235,000 individual education programs will result in some disagreement. There are those who believe that we have not had enough due process hearings in Pennsylvania. What we must strive for is the ability to disagree with one another without losing respect for each other's right to disagree.

Parent's Response

The Allegheny Intermediate Unit, in particular, does not work with parents to resolve matters prior to due process hearings. They substitute due process instead of participation by parents and the children's present teachers in placement decisions. They make it clear that our children are coming to their programs since the programs are there. Where they have parent contact, they go through the motions of setting up contacts to record they have done so. It is obvious from the dictatorial attitude and refusal to discuss the issues that their minds are made up in advance. They make the point that due process is the only place for our viewpoints to be considered.

The intermediate units are, therefore, substituting the due process of being a parents protection device for a means to speed up the process of changing our children's placement. It is their means of refraining from trying to work with us. Some of our parents have even been told if they did not go along with the intermediate unit recommendation, they would have to go through the complicated, expensive, and emotionally packed due process case, and are told this requires a specially trained attorney.

Four witnesses from a Parent Teacher Faculty Organization from another school for handicapped children attended a DePaul parent hearing and reported the following in a letter published in the Pittsburgh Press of June 19, 1980. "With this due process system, it seemed to us that we were the losers. It was hard for us to maintain a positive perspective that everyone at the hearing was acting as an advocate for this handicapped child."

It is not the system in itself we disagree with, but the manner in which the Intermediate unit goes about utilizing it.

Parent's Concern

12. IU personnel and the professionals they employ should refrain from the concept of winning at all costs in due process hearings. No meaningful cooperation can exist if the educational needs of our children are not kept in mind, and if our parents are not treated with respect.

Makuch Reply

The key phrase in this statement is "winning at all cost". It is hard not to agree with this statement. However, it is very much a judgement call as to how hard you try to make the point that what you believe is right without crossing over an imaginary line of unreasonableness that constitutes winning at all cost.

Parent's Response

We have already offered you proof on this point. All you need to do is review the Lydon and other due process hearings. A news reporter, attending a hearing, reported on witnesses stating the intermediate unit attorney acted rudely, was unprofessional, went through theatrics and intimidated parents. Three separate letters to the editor were published in the May 22, 1980 Press supporting the above comments. A June 19, 1980 letter in the newspaper from four board members of the Pathfinder Teacher Faculty Organization confirmed these conditions. They said, "At one point the attorney slammed his briefcase shut, left his seat and put on his coat. The Hearing Officer interrupted his theatrical antics and requested that the lawyer remain... We did find his behavior offensive, unprofessional and inappropriate for this occasion. Here was a young father struggling in the legal arena to protect the rights of his deaf daughter to be educated in the most appropriate environment to meet her specific needs. Instead of empathy, he experienced intimidation."

The comments in item 5 on the Lydon case also support this point. It is not necessary to take our word for it. The cases are available for your review. The July 10, 1980 comments of a parent in the Pittsburgh Press tells it all when she says, "What do they expect in the Allegheny Intermediate Unit when some of their people treat parents the way they do? Parents of handicapped children have been told that they are not fit parents, that they do not have enough education to participate in decisions regarding their children, that legal authorities will take the children if their recommendations are not followed and that they, as parents, will be taken to court. This kind of communication does not leave parents in a very receptive mood, nor does it tend to give us confidence that our children will be in good hands."

Parent's Concern

13. The IU approach of simply dictating events must stop. Parents, local school district people, DePaul Institute staff, and IU personnel must work together.

Makuch Reply

I agree.

Parent's Response

While we are heartened that you agree with this point, we find extreme frustration that continued flagrant abuses are increasing after our meetings with you and intermediate unit administrators. As recently as August 19, 1980 one of our parents was notified of an IEP conference scheduled two days later. She requested a mutually agreeable date and time since her husband would be out of town, she worked at the time set, and her child's teacher was not available. The response was neither her husband, or herself, or the child's teacher needed to be present for the IEP review upon which a change of placement was intended to be done. This particular parent has been visited and telephoned at her place of employment in efforts to induce her to change the placement of her child.

In the earlier mentioned Federal document you sent us, on Page 18 it states, "Under the law, the parents of a handicapped child are expected to be equal participants, along with school personnel, in developing, reviewing, and revising the childs IEP."

We note from a May 22, 1980 Pittsburgh Press item the comments, "Instead of working with parents, the Unit is regrettably fostering an adversary role among parties that need to work together to reach an acceptable solution for all."' In a July 1980 item in the newspaper are the comments from several parents from another school for handicapped children who state, "Unfortunately, the administrators of these programs have not learned that two-way communication can go a long way in resolving concerns. The dictatorial approach of state and local officials cause many parents to question their actions."

Parent's Concern

14. The concerns outlined are not new. These problems have been occurring for several years and have now reached a level where parents are considering resolutions that would be counter-productive. While we have succeeded in dissuading them, we cannot hope to continue this without noticeable improvement with regard to these points. As an indication of good faith, no further placement changes should occur at DePaul unless specifically requested by parents or DePaul staff until the above matters are substantially improved.

Makuch Reply

We will continue to work as quickly and diligently as possible to achieve resolutions. However, I cannot agree to order the intermediate unit to stop reevaluating children at DePaul or any other school. This is a legal obligation which they must fulfill and I must monitor.

I think that we must deal with the issues you have raised as part of the reevaluation process.

I have tried to be frank and honest in my responses. I have placed statements in writing which, if taken out of context, could be extremely misleading and inaccurate as regards my position on the issues raised by your 14 points. Consequently, I would ask that you respect my request that phrases or sentences not be lifted from the text and used to describe my overall position on a particular issue.

I look forward to any reactions you may have to my responses, as well as those of the intermediate units. As I have done on two other occasions, I am willing to meet and work towards resolution of your concerns.

Parent's Response

We do not ask you to abandon your legal responsibilities. We ask you to aggressively pursue them, especially in the areas earlier noted. You ask us to be patient and understanding while intermediate unit personnel continue to dictate, intimidate, and cause potentially permanent harm to our children as a result of a lack of a good educational base.

Prior to our July 1980 parent's meeting, you offered we mention to parents that they should consider a wait and see attitude, a sign that matters may improve. You pointed out it was too early to judge since it would be some time before placement decisions would be forthcoming. Within two days of that comment two of our preschool parents were told their children could not attend DePaul. When parents asked intermediate unit personnel where their children could go, they were told the intermediate unit did not have a program but still DePaul would not be authorized. Similar placements that have been approved before are not being approved now for DePaul, coincidentally after we started expressing concerns.

We concurred with you and added our support in alerting parents to the routine nature of yearly record reviews. We got parents to withdraw their objections to a review, assisting in avoiding a serious confrontation. This entire affair was turned completely around and used against us. A representative of AIU #3 made comments that the parents brought these actions upon themselves. An offer and action of assistance by us brought forth a threat by the intermediate unit. Dr. Roger Meehan expressed disbelief in all this since he stated he personally instructed the intermediate unit representative.

When we remained silent, our children suffered; when we spoke out, they continued to suffer; and then we acted on faith, and received more of the same. We seem to be left no recourse and request that you reconsider your refusal to slow down the pressure from your office and the intermediate units on our children at DePaul.

Southern Legal Counsel, Inc.
Suite A, 115 NE 7th Avenue • Gainesville, Florida 32601 • (904) 377-8288

MAY [illegible]80

May 6, 1980

Congressman Paul Simon
Chairman
House Committee on Select Education
227 Cannon House Office Building
Washington, D.C. 20510

Dear Congressman Simon:

Given the findings of the Education Advocacy Coalition's disconcerting Report on Federal Compliance Activities to Implement the Education for All Handicapped Children Act, I feel I should join with other advocates and persons interested in seeing the mandates of Public Law 94-142 fully and meaningfully implemented and enforced in supporting the Coalition's recommendations for much needed changes in this education area to the Department of Education. In that regard, action designed to prompt and facilitate the Department's response to the documented problems on the part of your Committee would be most desirable.

I appreciate your attention and consideration.

Sincerely,

Al Hadeed

Albert J. Hadeed
Director

AJH/lb
cc: Judge Shirley M. Hufstedler
Secretary
Department of Education

Kansas City Public Schools
The School District of Kansas City, Missouri
1211 McGEE STREET, KANSAS CITY, MISSOURI 64106, Phone 816/221-7565

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HENRY A. HAMANN, Secretary

September 19, 1980

Congressman E. Thomas Coleman
Member, Subcommittee on Select Education
Room 320, Cannon House Office Building
Washington, D. C. 20515

Dear Congressman Coleman:

Initially, may I express my appreciation to you for extending to me the privilege of submitting written testimony to the Congressional Subcommittee on Select Education. As Assistant Superintendent of the Division of Special Education for the Kansas City, Missouri School District, I have responsibility for the implementation of P.L. 94-142. In the discharge of this responsibility, the following concerns surfaced:

(1) Unless Congress honors its original committment for adequate appropriations for the Education for All Handicapped Children's Act, school districts throughout the country will soon be in non-compliance or will be tightening eligibility criteria and "screening-out" some children who should be served.

(2) Recruiting certificated Special Education teachers is becoming extremely difficult. While Special Education teachers generally are difficult to find, secondary special educators are in especially short supply. Areas of critical needs: Learning Disability Teachers, Behavioral Disorders Teachers, Mobility Instructors, Physical and Occupational Therapists.

(3) Clarification is needed on the provision of related services. Does treatment encompass psychiatric and psychological counseling? If a medical problem is suspected that appears to have no bearing on the prescribed educational program, is the school district obligated to pay for these evaluations?

(4) Evaluations provided by medical consultants for children whose health problems indicate a need for such evaluations will be an added financial burden for school districts.

(5) Since in urban school districts, most of the P.L. 94-142 funds are spent for salaries of professional persons, the inflationary costs connected with rising teachers' salaries are placing tremendous budgetary restrictions on other services supportive to handicapped needs.

(6) Nationwide, special educators must come to grips with a definition for the behaviorally disordered student. A definition and adequate and viable identification criteria need to be developed so that all districts are providing the kinds of supportive programs for the behaviorally disordered that are needed.

(7) Does a judge have the latitude to recommend placement of a student in a specific private educational program? If the answer is "yes", is the LEA responsible for payment for that program for the student?

(8) There needs to be more coordinated effort between the LEAs, Department of Mental Health, and the Division of Family Services so that all programs, collectively, can impact upon the welfare of the handicapped student.

(9) There is in the law P.L. 94-142, and the regulations, considerable room for interpreting the intentions of Congress in respect to carrying out re-evaluations of students in Special Education programs every three years. Presumably, the intention is to determine if Special Education services are still needed. However, it is not clear as to whether a full and complete psycho-educational evaluation is required. Clarification in this area would be helpful.

(10) Pre-diagnosis of a student has been another concern for many districts. It would be helpful if the Subcommittee would invite open professional opinion as to what constitutes pre-diagnosis of a handicapped student.

(11) From experience on a day-to-day basis with P.L. 94-142, it appears that the mandates are much more easily implemented in a smaller district than a larger one. So much so, that it seems that the architects of the Law were not cognizant of the inner-workings, limitations, and restrictions often experienced by large urban districts, i.e., the composition of the Individualized Educational Plan (IEP) Team members; the special service to be provided may not be available in the building where the student is currently attending; there may not be money available to pay substitute teachers so that the regular teacher can participate in the IEP conference. These problems are a function of the size and financial stability of the district and should not be construed as an indication of disregard for the intent or spirit of the law.

I am hopeful the concerns highlighted will be helpful to you as you orchestrate those forces necessary to translate into a viable language a structural framework for services to the handicapped.

Sincerely,

Jasper W. Harris

Jasper W. Harris
Assistant Superintendent
Division of Special Education

jmb

INDEPENDENCE PUBLIC SCHOOLS

OFFICE OF THE SUPERINTENDENT
Dr. Robert L. Henley

September 16, 1980

Ms. Betty Brand
1527 Longworth Building
Washington, D. C. 20515

Dear Ms. Brand:

Enclosed you will find written testimony to be included in the hearing record to be held by the Subcommittee on Select Education, September 22, 1980 in Kansas City.

We do appreciate the subcommittee's allowing us to submit these comments.

Sincerely,

R. L. H.

Robert L. Henley
Superintendent

RLH:mc

Enc.

1231 South Windsor Independence, Missouri 64055 (816) 833-3433

To: Subcommittee on Select Education

Date: September 10, 1980

From: Robert L. Henley, Superintendent

James Caccamo, Director, Special Education
Independence Public Schools
1231 South Windsor
Independence, Missouri 64055

Thank you for inviting us to submit written testimony to the Subcommittee on Select Education. First, we would like to thank this committee and the United States Congress for their enactment of PL 94-142. The law has provided educational services to many children who, prior to PL 94-142, were unserved or underserved. We believe PL 94-142 is an appropriate and timely law.

Because of the outstanding work of the framers of PL 94-142, there are, in our opinion, only two principal areas of oversight which need to be addressed. They are the area of emotional disturbance and the area of full funding.

Emotional Disturbance

Local educational agencies have had difficulty in providing services to emotionally disturbed and/or behaviorally disordered youth. The law speaks to "serious" emotional disturbance as a handicapping condition but does not address moderate or mild emotional disturbance or behavioral disorders. There is confusion over the definition of emotional disturbance/behavioral disorders.

In terms of diagnosis, one must move outside the usual boundaries of the local educational agency in order to provide adequate evaluation and diagnosis. An adequate evaluation probably would include a clinical psychological and/or a medical psychiatric evaluation and diagnosis. In addition, a total family evaluation is generally necessary and crucial in the diagnosis and treatment of the emotionally disturbed/behaviorally disordered child. The local educational agency has limited authority in these areas. Also, there would seem to be a real question as to the advisability of the local educational agency involving itself in this type of family and psychological diagnosis and evaluation.

The role of the public school in the treatment of emotionally disturbed/behaviorally disordered children seems rather vague. Under section 121a.14, special education, the local educational agency is responsible for the education of a handicapped youngster. However, in addition to, or prior to, the youngster's educational program, the student needs treatment for the diagnosed emotional disturbance/behavioral disorder. This treatment is typically provided in a medical or mental health model under the direction of a medical doctor, and perhaps more specifically, a psychiatrist or mental health specialist.

The medical and mental health communities must play an integral role in the diagnosis and treatment of the emotionally disturbed/behaviorally disordered youngster. The law should address first dollar responsibility for the necessary treatment of these youngsters. As a local school district, we have no question regarding the educational aspects of the program which is clearly the public school's responsibility. In brief, the interagency cooperation needed to provide effective service to the emotionally disturbed youngster is not now in place, and something needs to be done to coordinate the work of physicians and mental health personnel in the area of mental health with the educational services to be provided by the public school.

Full Funding

The cost of educating our handicapped children continues to rise. Not only is it more expensive to educate our handicapped children, in some cases it is three to five times more expensive than the education of non-handicapped youngsters. The emotionally disturbed/behaviorally disordered youngster is one such example. Therefore, we would urge the committee to continue to advocate full funding for PL 94-142.

Once again, we would like to thank the subcommittee for allowing us to submit these comments.

PREPARED STATEMENT OF JOSEPHINE E. HOLZER, PARENT

My name is Josephine E. Holzer. I am extremely grateful that my testimony as a parent of a physically disabled child has been solicited. It is my intention to take full advantage of this opportunity in order to represent the situation concerning the disability rights of parents and children in an accurate and forthright manner. I previously testified on June 6, 1980, at your hearings at Rehab Institute in Chicago. At that time I stated in some detail my background in the disability rights movement and, therefore, I shall not repeat it here,---except to state that I am the mother of three teen-age girls attending high school, the youngest of whom is a physically disabled, mentally alert freshman who has always "mainstreamed" in our family life and within our community as much as is possible.

Comments

I would like to preface my testimony with a few comments: I have received and studied the Final Report to the Secretary of the Task Force on Equal Educational Opportunities for Handicapped Children, of October 15, 1980. As I understand it, the Task Force was developed largely in reaction to the April 17, 1980, Report from the Education Coalition. My previous testimony in June supported the findings of the Education Coalition's Report. At this time, however, as a parent advocate, I do not feel that my current testimony should be given as a reaction to or as a critique of this bureaucratic document, necessary though it may have been as an exercise in reality confrontation.

I do want to state that I fully support the philosophical positions of both Closer Look and of Design for Change (Chicago); I cannot endorse their testimony, however, because I have not seen it.

It is my intention here to discuss some of the broader issues that are currently causing unnecessary suffering and hardship for parents and children. The common denominator among these issues is their domain: they are all under the control of education bureaucrats at the local and state levels. We believe many of these problems could be virtually eliminated by an effective federal bureaucracy. We have chosen these problems because of the growing resentment they are creating among parents and advocates. We would like to dissipate the resentment not only because of its concomitant pain but also because of the widening rift it is creating between parents and administrators; this rift in turn is feeding the spreading fires of due process. None of these elements, furthermore, is productive in serving the individual needs of disabled children and their families which is the legislative intent behind the federal mandates, the essential end-point of this service delivery system.

The first issue

Federal legislation mandates that local education agencies inform parents of their rights in relation to the education of their handicapped children. Step number one, you might say. The federal agency has done its part in providing information and so have many local agencies. In some local education agencies, however, the mandate is being substantively denied. All too often we hear from parents who have heard something about due process and vaguely understand the rights involved. Their local district has told them nothing about their rights, has provided no written information, and has offered no resources from the community to them. Yet somehow the "parents' network", an informal communications system, has gotten the word to these parents and they have come to us -- another parent, a resource, an organization, a service, etc.

But the responsibility to carry out the mandate lies within the administration -- with the bureaucrats, not the teachers, the resource people, the therapists, the parents, etc. In some states the state education agency has provided pamphlets for the local administrators to hand out to parents -- the materials remain unused on the shelves of administrators' closets. We know that this situation exists in our own state -- and it must exist elsewhere as well. Incredulous, you may ask why? We have been told by administrators that there are several problems involved, namely questions of when, how, and what to tell parents. For example, in one local district at an open meeting of parents of learning disabled students and administrators, the major topic was communication. A lengthy discussion revolved around the question of when to provide this information. Finally one administrator said, "I don't like to hand out that piece prepared by the state office because it says right there on the front cover '*handicapped*' children!" Families with disabled individuals need more reality and support and less sympathy and ineptness from professionals who are being paid to serve their needs. These families do *not* need professionals who create or add to their own sense of shame and/or guilt about disability -- which our society as a whole has carefully taught for too many years.

Some parents believe another reason for the administrators' failure to inform might be their strong resistance to and resentment of parent advocacy. Through the past several years professionals as well as other parents have often commented to knowledgeable, active parents that, certainly, their children were receiving appropriate services. But to our collective private amazement, we have found that the more actively involved a parent became in advocacy, the more difficult it was to obtain appropriate services for their children. Some of my fellow parent advocates have come to feel that they have been 'targeted' by local administrators, consciously or otherwise. The former approach (Know your rights and you will receive services.) is no longer viable, regardless of the method or approach of the parent. Instead, if you know your rights and press for services that are appropriate, you are likely to become a 'target', an example for other parents, if you will. The rationale has been explained by some as: If you can target and 'shoot down' a well-informed parent who is questioning or not accepting your judgment as a professional, no other parents will challenge your authority or judgments. Many parents now feel the increasingly familiar game of 'hard ball' that is being played by local administrators has probably developed due to their resentment of the parents' new knowledge base. The knowledge base was in all likelihood made possible through a federally funded project, service, publication, etc., and it is bearing fruit in the form of a rights-bearing attitude among parents. In short, somehow even at the basic level of information about rights the process of getting services to our children has become adversarial in too many local districts.

The second issue

Federal legislation mandates include specific timelines for the due process procedure which are being systematically disregarded at both the local and state levels. The major result of this practice is again that children are not being appropriately served. The factor of timelinass is also largely controlled by administrators, not by parents. For example in our own case, we filed for a local hearing on May 1, 1980; the hearing was held on September 24, 1980. We filed for state level review on October 13, 1980; we still have not heard any disposition of the state level review.

Last week at the State Advisory Council on Education of Handicapped Children, Dr. Robert Henderson from the University of Illinois (Champaign) reported some of his research findings on the time factor to the Council; he had voluntarily without pay performed this service for the state. Unfortunately, due to the opinion of one staff attorney at the Illinois State Board of Education, Dr. Henderson was not given access to the files with the raw data; instead he received photocopies of the findings with the names of children and hearing officers blacked out. Dr. Henderson is a respected member of his university faculty, a previous chairman of his department, and certainly a bonafide researcher. Yet, as he is the first to say, his final figures are somewhat devoid of meaning or depth due to the superficiality of the data provided by the state staff. He can say, however, that state level review has taken as long as 400-plus days. One member of the Council, furthermore, commented that she knew of one that had taken two years. One is lead to speculate even further about the raw data provided by state staff. As soon as I receive my copy of his report, I shall forward a copy to you. In short, the quasi-legal timely factor is being ignored all too often by administrators who are continuing their 'business-as-usual' approach to serving our children, who are flaunting their power in the face of a federal mandate in an ill-conceived power struggle to preserve their own sense of authority over parents and the children they are paid to serve.

The third issue

Section 504 of the Rehab Act of 1973 mandates that federally funded programs be accessible or barrier-free. There is one official within the Office of Special Education (formerly Bureau of Education for the Handicapped) who has publicly proclaimed that accessibility is really no longer a problem. If that gentleman would be willing to spend some time on-site with me, I believe I could dissuade him of that position -- or perhaps he could convince me of his position, and especially of his definition of accessibility. As the parent of a physically handicapped individual, who is also mobility limited, I would like to take issue with such glib pronouncements. He does a grave disservice to this, the smallest class of individuals within the class of disabled people, when he speaks so easily of solutions. And yes, it does indeed engage my anger to hear such gratuitous declarations from someone within the federal bureaucracy, the very agency which is responsible for compliance and review. Is he really saying that the two complaints we filed with the Office of Civil Rights on the accessibility of the two public high schools to which our daughter has been assigned are false, without foundation in fact, the result of disgruntled parent advocates?? Certainly our daughter could probably get into some of these buildings -- for the most part there is at least one "reasonably accessible" entrance/exit. What would happen, I wonder, in case of a fire or emergency evacuation? Is my daughter as safe as her classmates who are not in wheelchairs?? Is my daughter to be ignored in such situations?? Please tell me, Mr. Federal Official -- you who speak the words so easily.

And what about the creation of "safe havens", so-called safe rooms within a public school where there is no easy fire exit. But safe from what? Smoke? Heat? It would seem unlikely! Yet in our state, Mr. Simon, physically handicapped children are being put into such "safe havens" while everyone else evacuates the building.

And what about toilets? A very private matter that one does not normally discuss. But a very necessary private matter that MUST be properly accommodated. Perhaps he would rather not speak of it, but I shall. In the two high schools I have referred to there is only one unisex facility provided -- between them! There are no other accessible toilet facilities in either building. In the state-approved facility for the physically handicapped, which is also a regular local high school with about 1,000 students, there is the one unisex toilet; in the larger school with about 3,000 students, there is no toilet that is accessible. Now, what is accessible, Mr. Federal Official? Any standard of accessibility that I have ever seen includes not only toilets, but also telephones, drinking fountains, parking facilities, etc., etc. It is beginning to happen in public schools, but it is not anywhere near a solution. It is easier to get around in the grown-up world -- where business gets a tax-deduction or credit for providing accessible facilities, as well as more customers -- than it is in school buildings, especially at the secondary level.

The fourth issue

Federal legislation mandates that handicapped children be educated in the least restrictive environment appropriate to their needs with non-handicapped peers and that such an education be a free and appropriate public education. In our state, Mr. Simon, the state administrative staff has created a list of approved facilities which essentially restricts the full continuum of available schools to which a local district is permitted to assign its students. Like most public school educators across this country, the staff has by definition eliminated private schools because they are 'restrictive' and therefore not allowable within the least restrictive requirement. On its face such a declaration does not seem to be unfair.

In the case of a physically handicapped, mobility limited mainstreaming child who lives in a district without accessible "regular" schools, it is outrageous, untenable, unacceptable -- to deny a free appropriate public education simply because the only accessible facility for miles and miles happens to be a private non-parochial school. It may be true that in academic matters a larger public school would have more resources and therefore better services. It is not true, however, in physical matters where the only acceptable facility is one that is barrier-free and therefore safe as well as accessible.

Conclusions

Lest we forget it must be said that the system is working in many places for many children. But let us not forget that it is also not working in many other places, especially for children with low incidence needs. In this connection it should be noted that research has shown for many years that physically disabled people create the most discomfort psychologically for people who are able-bodied and that this group is also the one most frequently and severely discriminated against.

The main thrust of my comments has been to demonstrate the mounting sense of outrage that I see among parents and their advocates, especially against administrators. The failure to serve, the failure to understand or address legitimate needs, the failure to observe federal mandates -- these actions by administrators are the immediate cause of outrage. Allow me a few more examples --

+ A school social worker told an active parent advocate at a school meeting about her multi-handicapped teen-ager that she, the parent, should go home and take a bubble-bath.
+ A special ed director sent a staff psychologist to a mental health facility where a schizophrenic teen-ager was under treatment in order to obtain his records; the 'fly in the ointment': the LEA did not pay one cent toward his maintenance, but felt they should have his personal records without parental consent.
+ A child has received physical therapy and transportation since 1974 and 1975. Since due process proceedings, child has received no services (five months); the parent transports the child two times a day for a total of 40 miles a day.
+ The Cook County Regional Educational Service has over one million dollars in a fund set aside for inservices; the area

superintendent (Mr. Martwick) will not release the money for inservices and refuses to discuss his reasons. Meanwhile the fund continues to grow.

- Another significant problem of which most parents are not even aware: the layering of educational administrations which causes an enormous dilution of the monies set aside from our taxes for the education of our children. One component of this layering is the cooperative -- fertile ground in the past couple of decades for empire-building and for the most restrictive environments for children. But you will need separate hearings to sort out that whole system.

The coming political changes, especially in the area of civil rights issues, is frightening to many activists. Currently many parent advocates and advocate organizations define or equate disability rights as civil rights. Whereas in the past parents most often were made to feel that disabled children were a burden, with no rights whatsoever -- not even to life -- today's climate is substantively better for parents and for their children. Society as a whole, legislators, professionals in medical and educational fields, providers of services even -- all are more willing to accept the disabled person as a unique individual who happens to require some special accommodations. The past ten or fifteen years has seen a "quiet revolution" for disability rights. It is our fervent hope that the coming changes in political climate will not undo the legislation that is already in place. Let us hope that we can all continue to strive for more understanding of our pluralistic society so that we may better understand its advantages and live together in greater harmony even with its disadvantages.

AUG 15 1980

WASHINGTON
SPEECH
HEARING
ASSOCIATION

August 1, 1980

Mr. Paul Simon, Chairman
House Committee on Education&Labor
Subcommittee on Select Education
Room 320, Cannon House Office Building
Washington, D.C. 20515

Dear Mr. Simon,

It has come to our attention that the matter of related services in special education is being reviewed by your committee. We would like to express our concern and support for continued audiological services in the public school sector. Enclosed is a packet of information describing the role of the Educational Audiologist as adopted by our state professional organization. We would appreciate your review of this information and hope it is of benefit to you in your decision-making process.

Thank-you for your time and consideration of this matter.

Sincerely,

Kathleen K. Husband

Kathleen K. Husband, Chairperson
Ad Hoc Committee on Educational Audiology
Washington Speech and Hearing Association

Susan F. Soltman, President
Washington Speech and Hearing Association

Enclosure

EDUCATIONAL AUDIOLOGIST

The summary of this page was submitted
to the Special Education Advisory Board

ROLE:

The educational audiologist is an ESA certificated audiologist who supervises and coordinates hearing screening programs and provides audiological services, including hearing testing, management of hearing aids and auditory training to all children with hearing impairments. The educational audiologist also works with teachers, parents, health personnel and agencies to assure the best management of each hearing impaired child.

FUNCTION:

To establish, coordinate and supervise hearing screening programs as directed in WAC 248-144-010 through WAC 248-144-100.

To provide inservice training for staff working with hearing impaired students.

To participate in interdisciplinary staffings regarding individual children.

To make appropriate referrals to other person(s) and/or agencies.

To provide full-scale audiological evaluations and follow-up for individual children.

To provide feedback on results of evaluations to parents, teachers and other appropriate individuals and/or agencies.

To evaluate, maintain and replace hearing aids and hearing aid parts as necessary.

To assume responsibility for aural rehabilitation programs for hearing impaired children and coordinate activities with appropriate personnel such as teachers and speech pathologists.

To assure that all equipment used to evaluate children is maintained and calibrated as appropriate.

EDUCATIONAL AUDIOLOGIST

Introduction

Urban Versus Rural

The functions of the educational audiologists and the activities they perform are highly dependent upon the type and size of the population served. If the population is small, an audiologist might function in both regular and special education classrooms. However, in order to provide the necessary service to children, as the population increases or diversifies, it would be necessary to increase the number of audiologists and/or split the duties as described in the "activities" section. In an urban center, therefore, it is likely that the population will be relatively large and centralized, thus requiring the services of at least one educational audiologist and, most likely, two. In suburban, rural areas, an audiologist could work for the Educational Service District (ESD) and serve several local school districts.

Screening

Ratios of Educational Audiologists to students: The following ratios are based uopn full-time employment.

Urban

In an urban environment where travel time is not extensive, adequate screening services could be provided to students in regular classrooms at a ratio of one audiologist to 25,000 children.

Rural

As distances and travel time increase, the ratio of audiological time to children must be adjusted. When travel time per week extends beyond ten hours, the audiologist should be responsible for fewer children.

Initial and Continuing Assessment

Hearing Impaired

Children who are hearing impaired require consistent, ongoing evaluation and management. Adequate audiological service can be provided to this population using a ratio of 75 hearing impaired children to one audiologist.

Non-hearing Impaired Special Education

Those children who are severely retarded and/or are physically handicapped or have multiple handicaps are often difficult to test. Adequate audiological service can be provided to this population using a ratio of 500 children to one audiologist.

The audiologist in a suburban/rural area could function better as a part of an ESD system than as a consultant to a local school district. By working for an ESD, service to children could be facilitated to all districts on a needs basis and in an unbiased fashion. As a consultant, the hiring district may not be willing to share the audiologist's time fairly. There is also the additional problem of serving too many bosses and "loyalty" to the hiring district.

Duplication of Services

Because the state of Washington has guaranteed each child an appropriate educational program and because the educational audiologist provides services which are an integral part of this educational program, these activities do not overlap the clinical audiological services of facilities such as Seattle Hearing and Speech Center. Further, the background which is necessary in order to develop a qualified educational audiologist is broader, more in depth and more related to education than the background of a clinical audiologist. A precedent has already been established in Washington State for utilizing the services of special support personnel such as occupational therapists, physical therapists, speech pathologists and nurses which in no way interfere or compete with those providing these services on a private basis.

Specifically, clinical centers do not provide screening services to large numbers of children. It is far more expedient and a better guarantee of appropriate education when children are screened within the school system. Further, the special needs of hearing impaired children require immediate attention and continued maintenance in order to carry on a sound educational program. The problems which arise with these children relative to ear molds, hearing aids, increasing hearing loss, are an integral part of the total educational program and cannot wait while appointments are made in other facilities which often take three to six weeks. These problems need immediate attention. The educational audiologist can provide immediate attention and provide the necessary follow-up with the teacher, principal, nurse or speech pathologist which cannot be provided by clinical facilities or hearing aid dealers.

Financial problems must also be considered. Many parents cannot afford to pay the prices charged at community facilites such as hospitals, clinics and hearing aid dealers. Therefore, services needed to implement a total educational program are not attended to. The child then is unable to take full advantage of the educational program. Data are available which demonstrate that with a full-time educational audiologist in a district, a greater percentage of the students wear hearing aids full time and the hearing aids are in better working condition thus permitting the student to take full advantage of the educational opportunity.

Paraprofessionals

There are people who assist the audiologist in performing certain duties. These people are often referred to as audiometrists or audiometric aides. The duties of these paraprofessionals may include screening and initial re-testing under the supervision of the audiologist, assisting the audiologist when testing a very young or difficult-to-test child by conditioning and reinforcing the child appropriately. Additional activities would include pulling folders, filing, making duplicate audiograms and other clerical duties.

Some of this assistive services could also be provided by hearing therapists, speech pathologists, nurses or other personnel. However, it is essential that these people receive careful and consistent training and work under the supervision of the educational audiologist.

Activities

An educational audiologist may provide the following services to students. As the number of children increases, the number of activities will decrease. Also, hired on a part-time basis, an audiologist could perform only a few of these activities. The activities are separated into two categories: (1) those activities required when working with special education children, and (2) those required when working with children in regular classrooms.

Hearing Impaired Programs

- Hearing evaluations
- Hearing aid evaluations
- Minor hearing aid repair
- Make ear molds
- Auditory training
- Placement evaluations
- Set up training programs for teachers
- Staffings
- Parent Conferences
- Inservice for teachers/parents of hearing impaired
- Teaching regular classes, teachers and kids
- Medical referrals
- Other agency referrals
- Report writing
- Scheduling
- Letters/phone calls to parents and other agency personnel
- Calibration of equipment
- Teacher conferences
- Routine checkup of auditory equipment in classrooms, including personal hearing aids

Regular or Other Special Education Classrooms

- Train assistants to screen
- Re-train CDS to screen
- Supervise students on practicum
- Make up and distribute forms for screening
- Schedule schools for screening
  - Obtain class lists
  - Schedule rooms for testing
  - Get mothers to transport
  - P. R. work with princiapls, etc.
  - Noise level readings in test rooms
  - Make sure equipment is available and set up
- Supervise actual testing
- Test difficult kids; long-term assessment
- Phone and/or letters to parents (occasional in person contact)
- Re-test during year
- Monitor hearing impaired kids in regular classes
- Parent contact
- Hearing aid checks
- Teacher contact and conferences
- Auditory training/arrange therapy

Teaching sign classes

Coordinates activities relating to staff, children and placement and/or movement of children

Staff meetings

Support service meetings with supervisor, psychologist, CDS, consultants

Home visits

Inter-district meetings and conferences

Inter-program hearing evaluations (for other special education kids)

Inter-agency evaluations--hearing aid adjustment

Supervise university students on practicum

Obtain noise level readings in rooms

Re-evaluations

Series testing for difficult-to-test kids

Obtain assistant for testing young and difficult-to-test kids

Set up conditioning programs to prepare kids for testing

Talk to college classes about audiology as a career

Impedance audiometry

Obtain and compile information on auditory training, lip reading

Updating information re: audiology to share with staff

Recordkeeping

Activities required by school district such as state reports, reports to supervisor and goals and objectives

Talk to classes about hearing loss, hearing aid, etc.

Talk to college classes about audiology as a career

Impedance audiometry

Inservice training for teachers

Staffings

Recordkeeping

Public relations with community (newspapers, television, etc.)

Support service meetings with supervisor, psychologist, CDS, consultants

Activities required by school district such as state reports, reports to supervisor and goals and objectives

Working with other professionals in order to assess auditory perceptual problems

Public relations with community (newspapers, television, etc.)

Transport equipment and hearing aids to hearing aid dealers

Purchase supplies at hearing aid dealers or other outlets

Assess/replace classroom amplifier equipment

Qualifications of an Educational Audiologist

The educational audiologist must have at least an M.A. (M.S.P.A.) degree in Educational Audiology, obtained through an accredited university or college. In addition to the required course work in audiology at the Master's level, classes are essential in each of the following categories:

A. Psychology

Normal and disordered aspects of child development (growth, motor, cognitive, emotional, social) sensory processes, learning theory (drive, motivation, reinforcement), deviant personality.

B. Education/Special Education

Curriculum, behavioral measurement including a signed language system (Manual English, Signed English, Ameslan, etc.), speech and language of the deaf, mental retardation, inter-disciplinary approaches to evaluation and management of developmental disabilities.

C. Speech and Language

Normal and disordered acquisition of speech and language, phonetics, linguistics, evaluation and management of speech and language disorders.

D. Anatomy and Physiology

In particular, re: speech and hearing mechanisms.

E. Basic Hearing Science

Psycho and physiological acoustics (stimulus, organismic and response variables re: the hearing process), scientific methods, instrumentation, calibration, standards.

Knowledge in the above, broad topical areas, specific skills/competencies in evaluation and management of hearing disorders in infants and children are essential. Specific areas of expertise should be developed in evaluations and management of children.

Evaluation

*Techniques in interviewing and establishing a case history.

*Evaluation of intake information.

*Formulating test strategies on basis of intake information, interview and case history information and direct observation of child.

*Skill in the application of reinforcement techniques.

*Application of test procedures consistent with general/language development of child.

*Impedance audiometry.

*Evoked Response Audiometry (ERA).

*Speech Audiometry -- assessment of threshold, supra threshold, discrimination (consistent with language development of child), auditory perception in the presence of competing signals, auditory memory, temporal auditory processing as a function of length, type, context of message.

*Identification Audiometry (School Age) -- choice of test method, population to be tested, criteria for pass/failure, referral considerations,

*Interpretation of audiometric test results re: medical referral, need for amplification, educational considerations, impact of hearing loss on child's total functioning.

*Conveying information about test results to parents, child, other professionals including physicians, and teachers via verbal descriptions, counseling, staff conferences and written report.

*Knowledge of the evaluation, fitting care and maintenance of hearing aids.

Management

*Medical and educational referrals.

*Participation in educational placement decisions.

*Amplification -- characteristics of hearing aids/auditory trainers including conventional amplification, modified forms of amplification (transposer, AVC, etc.) selection of appropriate instrument, monaural versus binaural, test methods, both formal and informal, to determine benefit from amplification, ear mold considerations, signal-to-noise considerations.

*Working with parents, teachers, others, regarding: hearing aid usage; maintenance, expectations regarding: hearing aid usage.

*Parent training programs - conveying information regarding impact of hearing loss on child's total functioning, communication/language stimulation.

*Education of teachers regarding: understanding of hearing loss, communication deficits in association with hearing loss, classroom seating, management of amplification in classroom.

*Setting up and carrying out of Identification Audiometry Programs including appropriate follow-up procedures.

*Establishing and managing hearing conservation programs.

*Learning to work effectively as a team member with other professionals (speech therapist, psychologist, social worker, etc.) toward best interest of child in question.

*Providing assistance to teachers, speech therapists, others regarding: planning therapy programs in language, auditory training, speech reading and total communication.

> Selecting an appropriate target behavior for modification through direct observation, diagnostic test information, and other data.
>
> Formulation and execution of small-step programs designed to modify the behavior.
>
> Keeping and accurate record (data collection) of child's performance which dictates the success of the therapy plan.
>
> Setting criteria which determine successful modification of a target behavior.
>
> Determining a new target behavior for modification.

*Direct therapy following form outlined in above and drawing from knowledge of normal and disordered auditory systems, speech reading techniques, perceptual processes both with and without competing signals, and the speech-language-communication process.

*Learning to test with hearing aids and to discuss their appropriateness to children with parents, teachers and others.

Practicum Experience

The educational audiologist would be expected to have a minimum of one full quarter of practicum experience in a school setting. The following areas should be included:

A. Observation in a regular classroom.

B. Observation in special education classrooms other than hearing impaired.

C. Observation in hearing impaired classrooms, elementary and secondary where possible.

D. Work with the educational audiologist by:

1. Participating in ongoing activities as listed previously.
2. Participating in parent conferences.
3. Participating in interdisciplinary conferences, including assessment information and placement.
4. Participating in aural rehabilitation where possible.
5. Participating in the organization and management of a screening program.

OR

6. Participating in ongoing assessment of hearing impaired and/or other special education children.

MAY 6 1980

Nebraska Advocacy Services

3940 Cornhusker Highway, Suite 200
Lincoln, Nebraska 68504
Telephone 402-467-4616
Executive Director:
Ms. Mirdza Kaine

April 29, 1980

Congressman Paul Simon,
Chairman of the House Subcommittee on
  Select Education
227 Cannon House Office Building
Washington, D.C. 20510

Dear Congressman Simon:

I recently had an opportunity to review a report prepared by the Education Advocates Coalition. This report detailed the many instances of non-compliance by state and local education authorities with the Education for All Handicapped Children Act (PL 94-142). In developing data for this report, the Education Advocates Coalition surveyed eleven states.

As the protection and advocacy agency in Nebraska, Nebraska Advocacy Services has responded to many inquiries related to the education of handicapped children. It has been our experience that the conditions described in the report also exist in Nebraska. In particular, there are many handicapped children who are isolated and segregated from their non-handicapped peers; some institutionalized school children don't receive any educational services and many parents are still denied an opportunity to equally participate in developing their child's IEP.

It has also been our experience that the Bureau of Education for the Handicapped, (BEH), is not able to enforce PL 94-142. Of the referrals made by Nebraska Advocacy Services to BEH, the typical response has been to refer the matter back to the State Department of Education. This results in further inaction as the Department of Education is not able to enforce compliance either. Typically, parents are urged to appeal to the state hearing officer, an action which can be quite expensive. More importantly, it should not be necessary if BEH were to be a strong compliance agency.

Therefore, I fully support the recommendations made by the Education Advocates Coalition and urge you to exercise the Subcommittee's oversight powers to assure immediate and responsive Department of Education action.

Sincerely,

Mirdza Kaine
Executive Director

MK:slw

cc: Yohalem's
  Shirley M. Hufstedler

Board of Directors: [illegible], Lowell; Roger [illegible], Plattsmouth; Dee Everitt, Lincoln; Tripp Lenhart, Scottsbluff; James D. Livingston, Grand Island; John Murphy, North Platte; Ivan [illegible], Hastings; James Sides, Omaha; Larry [illegible], Waverly.

PREPARED STATEMENT SUBMITTED BY PATRICIA KAYLOR, PH. D., COORDINATOR OF SPECIAL PHYSICAL EDUCATION, ADELPHI UNIVERSITY, GARDEN CITY, N.Y.

A 1973 survey conducted by the Bureau of Education for the Handicapped, U.S. Office of Health, Education, and Welfare estimated that fewer than 20 percent of all schools offered physical education services to handicapped children and of these schools, 80 percent conducted "inadequate" physical education programs. Due to this finding, physical education has been included in the definition of Special education.

121.24 Special Education

> (a) (1) As used in this part, the term "special education" means specially designed instruction, at no cost to the parent, to meet the unique needs of a handicapped child, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions.
>
> (b) (2) "Physical education" is defined as follows:
>
> (i) The term means the development of:
>
> (A) Physical and motor fitness;
>
> (B) Fundamental motor skills and patterns, and
>
> (C) Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports).
>
> (ii) The term includes special physical education, adapted physical education, movement education, and motor development.

The services just named are designated by law as mandatory services which must be made available at no charge to handicapped children and their parents. As a mandatory service, physical education must be provided to all handicapped children. In order to determine state compliance with the physical education mandates of PL 94-142, Special Olympics Inc. conducted a telephone survey of State Special Education Directors. Of the 56 states and U.S. territories surveyed, 53 responded to our questions regarding screening, referring and evaluating procedures in physical education and professional preparation of special physical educators.

Results showed that only 37% of all states and territories require information on a child's physical education abilities in its screening and/or referral process. Similarly, 26% of states and territories have established written procedures evaluating the physical education needs of an identified handicapped student, and less than 20% of the states have established criteria for determining special physical education placement of an identified handicapped student.

Although 40 of the 53 states and territories polled indicate that students identified as needing special physical education require those needs to be addressed on the individualized education program (IEP), only 13 states have an established IEP form specifically addressing physical education. Fifteen states and territories (28%) include a physical educator as a member of their State Comprehensive System of Personnel Development committee. This lack of representation is reflected in that only five states have certification requirements for teachers of special physical education.

This survey clearly indicates that the physical education mandates of PL 94-142: The Education of All Handicapped Children Act of 1975 are not being met at the state level. Although no formal data exists, it would seem to follow that local education agencies are also not in compliance with physical education mandates. Unless the state clearly establishes written policy and procedures regarding screening, diagnosis, referral, programming, evaluation, monitoring and professional preparation in special physical education, local education agencies will flounder in complying with physical education mandates due to this lack of federal and state direction.

All handicapped children need appropriate physical education experiences. The mentally deficient whose employment opportunities are limited to jobs emphasizing physical rather than academic abilities must develop the requisite motor skills and physical conditioning necessary to secure and maintain employment. Their jobs, like millions of other Americans, allow for a growing abundance of leisure time; leisure time that must also utilize recreation skills which emphasize physical abilities. These facts indicate that quality physical education instruction for the mentally deficient is more important than for their academically capable peers who are more likely to hold desk jobs demanding little fitness and to use their leisure time in reading and other intellectually oriented activities.

Removing architectural barriers from our public schools has created a horrendous dilemma in the physical education class. Orthopedically and health impaired children successfully mainstreamed intellectually are too often inappropriately assigned to regular physical education as well.

Due to their physical and motor limitations these students cannot successfully participate with their non-handicapped peers, so they become perennial spectators, score keepers, or timers instead of active participants in an appropriately designed physical education class. These handicapped individuals are not receiving the physical education, recreation, and athletic experiences afforded non-handicapped students. PL 94-142 as well as Section 504 of the Rehabilitation Act not only reaffirms the right of all handicapped students attending public schools to receive appropriate physical education services, but extends the concept into the areas of athletics, intramurals and recreation. Essentially this means that handicapped students should not be denied equal opportunity to participate in regular school extra curricular activities or comparable special activities. If comparable special activities, such as the Special Olympics or wheelchair sports are necessary, then these experiences should likewise be funded in a manner consistent with other extra curricular school activities.

The greater the child's handicapping condition, the more likely he is to have an overabundance of leisure time during the adult years. For the mentally deficient, leisure must be taught, and may even become a form of employment. Throughout their developmental years handicapped children are continuously running from specialist to specialist receiving a multitude of therapies to improve speech, reading, coordination etc. During this time the handicapped child has very little leisure time and consequently no need to develop recreational skills. However, as an adult, these therapies cease and an abundance of empty time replaces time spent in therapy. Having developed no leisure interests or recreational skills, leisure time becomes empty, boring, and mentally and physically unhealthy. Leisure education may be the most important aspect of the total education of handicapped children.

Athletics are an outgrowth of the physical education program. Extramural competition including interscholastic and intercollegiate athletics is associated with the gifted athlete. Handicapped students have not generally been integrated into extramural athletics. However, athletics and sport participation is a means of normalization and has been shown to be an important part of integrating the handicapped into the mainstream of society.

Programs such as Special Olympics for the mentally retarded, National Wheelchair Athletic Association, American Athletic Association of the Deaf, United States Association of Blind Athletes, National Association of Sports for Cerebral Palsy, Paraolympics, Tournament of Champions, and many other national and international athletic programs for the handicapped follow the motto: Sports by ability, not disability. These sport models offer successful approaches to sport training and competition for the handicapped. Each model emphasizes the functional ability of the individual and minimizes the adaptation and modification necessary for successful participation. Though the models exist, few public schools have incorporated them into their physical education and athletic programs, and as such, have denied handicapped students the opportunities offered their non-handicapped peers.

Special Olympics, the most widely publicized sport program for the handicapped, offers year round training programs for the mentally retarded culminating in a series of more than two thousand state and local meets in the United States, District of Columbia, and thirty foreign countries. The Special Olympics program sponsors fourteen competitive sports and over 30 non-competitive demonstration sports for the mentally retarded. Companion programs offered by many of these athletic programs teach parents how to assist their special child in his development, train their athletes to secure and maintain employment in the field of recreation, train teachers and coaches in sports skill instruction for the handicapped, and sponsor summer camps.

With us today are two Special Olympians, Otis Bryant and Tracy Grell, Mrs. Doris Grell, the mother of Tracy, and Mr. Herb Rosenblatt, special education teacher in the New York City School District. All four individuals have been involved in Special Olympics training and athletic competition for a number of years. It is important that you realize Otis and Tracy are the exception rather than the rule, in that they receive their training and participate in Special Olympics as part of their physical education program. Throughout most of New York and the nation as well, Special Olympians must look to sources other than their local education agencies to receive motor fitness and sport skill training and competition.

DEC 10 1980

905 4th Ave. W.
Kalispell, Mont. 59901
December 4, 1980

HONORABLE Paul Simon
Subcommittee on Select Education
House of Representatives
Oversight Hearings on P.L. 94-142
Washington, D.C. 20515

Dear Mr. Simon:

This statement may be too late for the working of your committee. I request that it be made part of the permanent record if at all possible - and if not, possible, that it be retained and made part of the record when oversight hearings are again held on this law.

I have read the testimony of the hearings of 1979 and find two very important areas not addressed. One is the continuity of the special education of a child when traveling from state to state. The other is the provision of special education in private schools. A third very important issue is the provision of legal services for the parents of a handicapped child, when they are forced to go due process.

In order to explain some of the difficulties, I will use a personal example. My son, Brian is now 16 years old. He was damaged in the early stages of pregnancy by German measles, the rubella epidemic of 1964. He was born in September of 1964.

He was seen by a pediatrician at birth because I was worried (an abortion had been suggested). The pediatrician declared him normal. He was not identified as an at rick baby. There was no follow-up suggested. He had some problems learning to swim, and some difficulties when he got into school that got worse as he got older. He was recommended, not for evaluations, but for academic assessment in order to determine whether or not he should be held back. He has been held back twice, once before kindergarten (his pencil work was immature) and once when transferring schools in order to give him a "better Background" to handle the high schol program.

Prior to his leaving a small private grade school and entering a public large junior high, I visited with the people at the junior high school, once with the counselor and once with the resource teacher. I was advised at that point that due to his academic achievement in the middle or upper stanines that nothing could be done tolhelp him in that school - he could be helped only if he were in the lower 30% or if he were emotionally disturbed. He was not referred for evaluation to discover his refusals to do homework, his failures in math or his truancies. This was in the spring of 1977.

During the summer he attended a sports military academy in the East which also had remedial classes. Since he was enrolled in the school program, he was tested. It was at that time I realised there was a serious problem. He tested five years below grade level in some areas, three years below grade level in others. We immediately took him to a college in California for additional testing, and were told that he was learning disabled. We were advised to place him in a school for learning disabled in order to fill in the "holes" in his education. Within ten days, we moved - on a temporary basis - from Montana to California to place him in the special school.

After that year, but prior to his leaving the special school, we asked for a child study team in his public school district in Montana in order to place him in his proper classes the following fall. At first the school was reluctant to hold the meeting. They held it in March, but refused to incorporate perceptual-meter training into his program, even though evaluations at the school in California showed that he needed it. The Montana school district suggested that I get a neurological evaluation, which I did at my own expense. The Montana school district then refused to accept the evaluation of the neurologist - because he was not a Montana doctor. The neurologist has discovered that my son has cerebral palsy, and needed physical therapy at least three times a week. With many letters back and forth and cooperation of local doctors, after five months, an entire semester in the eighth grade, we were finally able to get him out of gym class, where he could possible injure himself, and into physical therepy - which occurred three times a week, sometimes.

When we left California, we brought with us anIEP written by Brian's main teacher complete with baseline data, goals, methods of reaching goals - his needs. The Montana school district refused to use the California IEP, either in its entirety, or as a working document or in any part. They also refused to accept the rsults of the Dominican college testing, insisting on doing all their own testing. Althoughthey occasionally would include a mainstream teacher in the child study meetings, they refused to accept the idea that possibly something the teacher did in class (modifications) would have to be different in order to accomodate this student in class.

Independent testing was done within the state, but they refused to accept the second diagnosis of learning disability, saying that this boy was obviously intelligent and "looked so normal". They also refused to accept the diagnosis of cerebral palsy (although now that we know, home movies of Brian as an infant show definite spastic movements, and now we understand why it took him five years to learn to swim with a dog paddle). They consistently attempted to write IEP's on the basis of what happens in class, rather than on the unique needs of Brian.

After two years of this hassle, Brian was again evaluated by Dominican in California. They stated that they saw a changed attitude toward school, and recommended a change in placement. We had already interviewed a one parochial high school - mentioning learning disability needing some classroom modification - and following that, interviewed at three more. The fourth one accepted him, the other three turned him down. One refused to even meet with me, one used the excuse of "full" even though we applied well within the deadline, and his borther was an alumnus, and the third refused to even accept an application. I had mentioned that Brian's reading was slow due to the cerebral palsy affecting his eyes, but that he could use tapes to learn and in fact has a tape machine from the State Library since he is certified to use books for the blind. I suggested that since he was of superior interlligence and had good comprehension, that he shoudl be treated just like a blind student. I asked her how she would treat a blind student. She said "We wouldn't have a blind student in our school." !!!

That was four months ago, in July, but I have not gotten over the pain that statement caused. I have said many times since "Did Jesus come only to save the perfect?" How x can those who are less perfect be simply dumped on the public school as somebody else's problem.

In state and federal legislatures people are worried about spending tax omoney in private schools, and so are very careful about what kind of service is given to students in private schools. Well, I suggest to you that a child should not be denied special education because of his religion - nor should he be denied his religion simply because he shoudl happen to require special education.

I suggest to you further that handicapped childr n right now in the United states are being denied special education because they are enrolled in private schools. First becasue the administrators don't want to bother with it, secondly, because the parents have not been informed of their rights and their child's right to special education, and third because those in the public sector are jealously guarding their dollars instead of being concerned about children. I know personally of a boy in a Lutheran school, identified as learning disable in the second grade, never placed in special education until the 9th grade, and then only because a parent advocate happened to know the mother and usggested that something should be done. She was told, when she contacted the public school, that if she had waited until fall, there wouldn't have been room in the program for him. Since waiting lists are illegal, kids just aren't put on lists at all!!!! or maybe they'll be served in Title I, even though the cause of their problem is neither cultural nor economic.

For these reasons, the application of P.L. 94-142 to the private schools needs to be strengthened.

To pick up the thread of the original story, my son is now enrolled in a Catholic high school in Seattle, Washington. The local public school district was xxfinotified in August - after he had moved there - that he was in the district, already identified as a handicapped child, and in need of services. At first my letters were ignored. During my first visit in September, no attempt wqs made to figure out how ti provide services, only to explain to me that services were impossible - because he was mild, because he was in a private school, because his eye condition needing excercise did not qualify for services under Washington quidelines (Saate quidelines).

In this September meeting, I gave them extensive copies of evaluations that had been done, doctors letters, etc., but for weeks I heard nothing. It was obvious that they were still going to ignore me. A letter was left unanswered. Finally a telegram brought a telephone call from the assitant director of special education telling me not to bother to make the trip. I drove to Seattle anyway - a drive of more than 14 hours, one way, from my home. After I arrived, we met. they were most gracious, and at that point, they identified my son as a "Focus of Concern" - as if he were a first referral. This was on the 18th of October. Never ~~mxmg~~ mind that they had been notified on the 28 of August that he was there and needed services. The parent's referral was ignored. Never mind that he had been identified as handicapped three years earlier.

Then then had, according to their regs, until the 22nd of November to complete their testing. The fact that Brian had had an IQ test in November of 1979 did not matter. It had to be repeated. The fact that he had a complete academic evluation in June 1980, did not matter - that had to be repeated. I refused permission for most of it, and a diagnostic evaluation of sorts was done. They did agree under a temporary IEP, to provide a 1-1 tutor four hours a week (the evaluator the previous year had specified that Brian needed 1-1 tutoring 1½ - 2 hours a day).

The point I am trying to make with all of this is that a handicap belongs to the child, not the school district. If a child moves, from State to State, or from district to district, he still has the same handicap, the same academic grade equivalents, the same needs.

All this game playing by school districts tells me that IEP's are still being written according to the convenience of the school districts, according to which services they feel like delivering rather than upon the real needs of the child.

IEP's once written, should transfer with the child, since they reflect exactly what the childneeds - thus they should be the same (or almost so) from district to district, and State to State.

Testing, when done by reliable institutions and qualified persons, should be accepted, instead of repeating over and over again tests on children. Repeated testing is obviously not to find out what the child needs, but only to determine which serfices can be denied under the law. A known handicapped child should be immediately accepted into a needed program, and not constantly re-tested in order to requalify. This should carry from district to district and State to State so that the child isnot damaged by bureaucratic games.

The third point is that parents are being denied their rights under due process simply because they cannot afford attorneys, and thus are scared away from working for the appropriate program for their child. Some system need to be devised to make the sharing of legal expertise more equitable.

On behalf of other parents, and myself, I thank you for this opportunity to testify, and also for the hearings that were held at various places througout the county. Perhaps there could be more publicity on these hearings so that more parents are able to give input - but we are thankful that testimony can also be given by letter.

Sandra Kelley
Sandra Kelley

cc: Senator Max Baucus
Tri-State Network

Prepared Statement of Kathleen King (Mrs. Laurence P.) St. Charles, Mo.

My name is Kathleen King, and I live in St. Charles, Mo. I am the mother of two handicapped children and I'm sure you'll be relieved to hear that they are doing very well in school. They have always been well cared for and I have no reason to complain about their education in any way. In the midst of all the frustrations, I thought you might like to know that, "somewhere the sun is shining, somewhere the sky is blue".

Because I have been so successful in obtaining a free, appropriate, public education for my children, other parents have asked me to help them. As a friend to these parents, I have accompanied them to their schools too many times to count. What I have witnessed in those schools leads me to the conclusion that the greatest need we have is the need to educate the educators.

My husband and I are fortunate. Before we moved, we interviewed the principal of the school our children would have to attend. In one case, we heard him say, (in response to our question about classes for handicapped children), "Well, yes, we do have a teacher who comes here sometimes. She teaches them (sic) retarded kids. But I don't let very many of them in my school!" We decided we wouldn't want our children attending his school either, so we went back to the realator and demanded a refund. It took us four more trips to local public schools before we found one who was worthy of receiving our children. Other parents have not been so fortunate.

81-

In one school, I saw a principal reach for a pen to cross out the label "Learning Disabled" and write in "Behavior Disordered", because the L.D. teacher had too many children and the B.D. teacher had some openings. He was honestly amazed when I told him he couldn't do that.

In another district, the parent was turned down flat when she went to the school to look at her son's records. It took a 60 mile trip from me and a half hour of educating the school clerks before they saw the error of their ways.

Another mother kept her teen-aged son at home for the last three months of school, at the request of the school board. She was expecting home-bound tutoring for those months, but it was never received, because the administration didn't realize she had a right to it.

Sad and all as these cases are, they are simple to solve compared with the problem parents face much more frequently. That is the dilemma of teachers who just don't understand the implications of being handicapped. Least Restrictive Enviornment is, unquestionably, a commendable goal, but what do you say to a shop teacher who can't understand why a sophomore with a fifth grade reading level can't pass a test written on a tenth grade level? "But he did so well in class", they say. "Why can't he answer the questions?"

What can I say to a fourth grade teacher who flunks every written assignment a child hands in because of "poor penmanship skills", regardless of the quality of the thoughts expressed?

What can anyone say to a school district that requires a student to be able to diagram sentences before being admitted to a welding class?

Over and over and over again, I see defeated students and disappointed parents who really believed that an appropriate education was within their grasp. Given the power of our Federal Government, there must be *something* we can do to engineer the delivery of such a promise. May I suggest some potential solutions?

1. *Implement* the training of professional educators. No school is better than its principal.

2. *Subsidize* the training of parents. Unfortunately, the quality of education today depends on the *status* of the parent. (*No* principal expels the son of the PTA President!) While I am more than willing to accompany any parent who calls me to an IEP conference, let's face it, there's not enough of me to go around. It's sad to say that a parent today receives only as good an education for his children as he is knowledgeable about the law. How many of *your* neighbors are familiar enough with Federal Laws to safeguard their children's education? Better yet, *WHY* should parents be required to know as much or more than professional educators in order to secure the appropriate education of their children?

3. *Coordinate* the services of Vocational Education and Mainstream Education. For too long, vocational educators have been measuring their success by the percentage of employable graduates they produce. Consequently, they welcome only the best and the brightest students into their hallowed halls and the handicapped students, who are the ones most in need of job skills, are left to flounder in an ocean of unskilled laborers.

As a nation, we simply can not afford the luxury of "benching" as much as 20% of our work force.

My final suggestion is for you, as a panel, to ask more questions of more mothers. Talking to professional educators is all very well and good, but they constitute only half of the team. The parents of the students form the other half and I'm sure that if this meeting was properly publicized, you would have heard from a lot more of them.

Thank you for taking the time to hear my pleas, and blessings on you for making the effort to improve our childrens' education.

Kathleen King

Mrs. Laurence P. King

700 N. Duchesne Drive

St. Charles, MO. 63301

KANSAS CITY, MO., *September 8, 1980.*

DEAR MR. COLEMAN: I received your invitation to the hearing on Pub. L. 94-142. I will not be able to attend, as I am a teacher and Sept. 22 is a school day.

Public Law 94-142 was a law passed with good intent, and I'm sure it has helped many students. However, it has created new problems which my school district is either unwilling or unable to solve. Special education classes (EMR, LD, and BD) are extremely overcrowded. The schools realize that they must legally diagnose and help these students, but there is no place for many of them. So, the district has its version of "mainstreaming", dumping a disabled student in a "regular" class. This version of mainstreaming is a disservice to the disabled student as well as to the rest of the class. Support services and teacher aides are a prerequisite for mainstreaming, or at least they should be. More money or more supervision to help solve these problems is needed.

I am also concerned that the law provide so little funding for the gifted. These students have their own set of unique problems which must be addressed. Their potential has been ignored and has withered for too long.

Sincerely,

PAMELA J. R. LACEY.

Prepared Statement of Carol L. Freyling, Secretary, Citizen Advocates for the Severely Handicapped, Creve Coeur, Mo.

Special School District's Deaf-Blind Program serves thirty-four children in five classrooms. The children range in age from two to twelve and are multiple handicapped. The program serves children from St. Louis city and county, as well as children from St. Charles, Jefferson and Franklin counties.

The parents of the children in the deaf-blind program feel their children are being offered an excellent educational program. However, there are several areas of major concern which may have a dentrimental effect on the overall continuing progress of our children.

Since the programs conception in the fall of 1976, a ten day extension of the regular school year as well as a four week summer program have been an important and necessary part of our childrens education. In April, 1980, we were informed that the amount of Federal dollars flowing into the state had been cut and consequently all the deaf-blind programs in the state would have to be cut to one hundred and eighty days. We were told, but have reasons to doubt, that a variety of alternatives to that decision were discussed and found unacceptable. In June, at a meeting with Dr. Leonard Hall, we were informed that regardless of whether or not the money had been available we would not have had a summer program. The reason given by Dr. Hall was that the class action suit against Special School District and others, by Robert and Mary Taris for continuous educational programming for their son Michael, prohibits any children in Special School District being offered any type of summer programming. We, as parents, found fault with this decision but were told we could do nothing to prevent the loss of thirty plus days of programming. We feel that the lack of continuity in the childrens program will cause serious regression.

At present, the school day is from 9:30 to 2:30. The buses arrive at 9:30 and by the time the children are in their classrooms and ready to begin their days activities it is almost 10:00. At the end of the day, the children are on the bus and ready to leave at 2:30. We feel the children should be in their classrooms by 9:30 and not leave until 2:30. There are also a significant number of children five and older who should be receiving a six hour educational program.

The grant written for the deaf-blind program includes the full time services of a physical therapist. It is approaching a year that our children have been without those services. Although we appreciate the administrations desire to hire only the best in staff personnel, the length of time our children have been without a physical therapist services must certainly be detrimental to their progress.

The criteria for entrance and maintenance in the deaf-blind program has changed several times since 1976. The criteria, not being specific and clear enough, allows too much subjectivity in the staff evaluations of the children. The parents, previous to their childs I.E.P., are thus repeatedly concerned as to whether or not their child will be allowed to remain in the program. We feel that once accepted into the program, the child should be allowed to remain until the age of twelve unless the program can no longer meet his needs.

September 17, 1980

Representative Paul Simon,

Re: WRITTEN TESTIMONY FOR PL 94-142 OVERSIGHT HEARING

Dear Representative Simon,

Enclosed is a letter copy I sent some few days ago. It will introduce my children to you and alert you to their specific handicaps.

Other complaints include; refusal of the Special School District to allow my taping IEP conferences, not informing me of the personnel to be present at the conferences, when I was informed, it was incomplete information as there were two (2) extra persons attending, and not implementing the IEP's for my children.

I also was not informed of the testing to be done with my boys and consider that the placement of the tests (in busy hallways) was inconsiderate and not condusive to good performance on the part of my children.

I also have reports of a facilitator done on my children that are very damaging and very incorrect.

I would be happy to speak with anyone on these matters.

Thank you for your attention to these matters.

Judy M. Lorino

Judy M. Lorino
4568 Jefroyal Court
St. Louis, Missouri
63128
phone (314) 894-0955

September 11, 1980

Dear

I am a parent with twin boys, Ken and Keith Lorine, formerly students in the St. Louis County Special School District. Their main handicaps were diagnosed as Speech and Language Development deficiencies.

For the current 80-81 school year, they are enrolled in regular classrooms in the Lindbergh School District. They are presently in the fourth grade at Kennerly School. This placement was made over the objections of Special School Dist., in fact, it was made only because of parental insistance.

PL 94-142 states that a child should be educated in the lease restrictive environment, to quote: sec.121a.-550-121a.556,

(b) Each public agency shall insure:
(1) That to the maximum extent appropriate, handicapped children, including children in public or private institutions or other care facilities, are educated with children who are not handicapped, and
(2) That special classes, separate schooling or other removal of handicapped children from the regular educational environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

I insisted on the placements in the regular school because of the law, but mostly because I thought it to be best for my children. After three and four years in Special School District, my boy were and still are socially deprived. They were also deprived in the area of academics. My children do not know what a friend is. They have never had occassion to form friendships because of the distances each child had to travel to attend school. I feel that by the age of almost 10, they should have an idea of what it takes to maintain a friendship, how to react to normal situations in a school, etc., and in particular, how to exist in a normal 10 year old society.

Since Speech and Language is their primary handicaps (they each have two legs to walk on, two arms that respond to brain signals, two ears that hear, two eyes that see, and mouths that function sometimes only too well) I feel there was never any reason to segregate them in Special District classrooms away from their neighborhood schools and away from the acquaintences they would have formed. I think Special School District miscomplied the rulings of PL 94-142 and is continuing to do so in keeping other Speech and Language Development children in special rooms.

Now that they are in a regular school, regular classroom, they are receiving services from a Resource Room staffed by Special School District. (In order to receive these services for one boy, I had to have him RELABLED Learning Disabled (L.D.) as a Speech and Language Disability would not have qualified him for this service.) In this resource room, my boys are to learn cursive writting. PERIOD. Now this is not to imply that they don't need help with their handwritting, it wasn't taught much in their special rooms, but they are greatly lacking in exposure to science and social studies.

When I brought this to the attention of the resource room teacher and her supervisor, they told me that they were unable to help with these subjects. (PL 94-142 sec. 121a.304 Full educational opportunity goal.

> (a) Each State educational agency shall insure that each public agency establishes and implements a goal of providing full educational opportunity to all handicapped children in the area served by the public agency.
>
> (b) Subject to the priority requirements under 121a.320-121a.324, a State or local agency may use Part B funds to provide facilities, personnel, and services necessary to meet the full educational opportunity goal.

Is it too much to ask that under the law, when my boys practice and learn their cursive handwritting, the writing apply to classroom curricula and be discussed with the regular teacher as to what the resource teacher should reinforce? My interpretation of the law is that a special teacher help a child in whatever area they are having trouble in order that they may remain in a regular classroom?

In all fairness, I must say that the special teachers are taking words from my childrens classroom work and teaching them to use these words in sentences and stories. My feeling is that since they have had no exposure to the science and social studies, these things should be explained and taught to them since they are so lacking in knowledge in these areas. Again, I must add, this is through no fault of their own. These subjects simply were not offered by Special School District. I do not feel my children are so handicapped as they have been handicapped by their lack of proper education in the Special School District.

My letter is already too long, and for this, I apoligize. However, this only touches the surface of my dealings with Special District on behalf of my children. I would b more than happy to speak with anyone on this subject at any time.

I do feel that St. Louis County Special School District broke the law and is continuing to break the law by retaining Speech and Language Development in Phase 3 and Phase 2 special classrooms. I feel that at least 75% of these children would be better served in their home districts with itinerant special help. I do feel that this noncompliance should prevent State and Federal funding being released to them until they decide to work for and place children in the least restrictive environment.

I thank you for your attentions to these matters and hope to hear from you.

Sincerely,

Judy M. Lorino
4568 Jefroyal Court
St. Louis, Missouri
63128

phone (314) 894-0955

KOTA

KANSAS OCCUPATIONAL THERAPY ASSOCIATION
SERVING KANSAS AND WESTERN MISSOURI

8300 Marty
Overland Park, Kansas 66212

November 1, 1980

The Honorable E. Thomas Coleman
1527 Longworth House Office Building
Washington, D.C. 20515

Dear Mr. Coleman:

The enclosed report, prepared by Winnie Dunn, M.E.d., OTR, represents the views of our organization. It serves in view of testimony, since we were unable to secure a place on the schedule for the September 22nd Sub-committee Hearings. We very much appreciate your open ear and take this opportunity to pass along our concerns.

Thank you.

Sincerely,
Linda McClain, OTR
Linda McClain, OTR
President, Kansas Occupational
Therapy Association

SPECIAL EDUCATION FOR THE HANDICAPPED OCCUPATIONAL THERAPY SERVICES

I am testifying in behalf of the occupational therapists in the Kansas Occupational Therapy Association (serving Kansas and Western Missouri) and the Missouri Occupational Therapy Association. We have several concerns regarding services for handicapped children in Missouri.

First of all, there has been some difficulty in defining the term 'ancillary service'. For example, some school districts limit that definition to one population of children, when occupational therapists can, and are also being of service to other populations, such as learning disabilities, behavioral disorders, speech and language, and developmental delays.(in addition to the orthopedically handicapped populations.)

Secondly, we are concerned that there are some children who are in need of occupational therapy service, who are not presently in need of other services. Being classified as an 'ancillary service' limits us to the population of children who are already in another program. This is especially important with respect to the early intervention programs being initiated and encouraged throughout the state.

Finally, there are situations in which occupational therapists are being used inappropriately. We have encountered situations in which minimal consult time was requested by the districts, when more time was necessary to provide adequate service. The districts are then stating that 'occupational therapy services are provided', even though they are inadequate services for the child or children.

We are pleased with the strides that Missouri has made in its service of handicapped children, and are anxious to continue being a part of these endeavors.

Winnie Dunn MEd, OTR
Occupational Therapist/
Learning Disabilities Specialist

(904 N.E. 60th Terrace,K.C.,Mo.64118)

PREPARED STATEMENT OF ANITA S. MARTIN, SPEECH-LANGUAGE PATHOLOGIST, NORTH KANSAS CITY SCHOOL DISTRICT

The following report was prepared by Anita S. Martin, Speech-Language Pathologist. She is currently employed by the North Kansas City School District and has the following qualifications:

B.S. Speech and Hearing Science, University of Iowa
M.S. Speech Pathology, Central Missouri State University
C.C.C. (Certificate of Clinical Competence) in Speech-Language Pathology)
Licensure, State of Missouri, in Speech-Language Pathology

When I began providing speech and language therapy professionally in 1974, I knew what I thought was quite a lot about my field and very little about the law. The numbers 94-142 had no special meaning to me any more than the letters I.E.P. did. How things have changed! I've learned and grown professionally enough to realize how much I don't know, and 94-142 and I.E.P.'s are new codes in my vocabulary.

I have long been an advocate of public education and feel strongly that every child, with or without a handicap, not only has the right, but has an essential need of individualized education. In my field, instruction has to be that way. We provide therapy through numerous techniques in several areas, among them are fluency (often known as stuttering) and articulation (saying sounds correctly), both of which are fairly well known. Services provided under the heading of "Language" are perhaps lesser known and more difficult to explain, but very important. Most people understand that a child must have "language" in order to communicate, but what that really means is unclear. Expressive abilities, understanding associative concepts, discriminating sounds, vocabulary, receiving (through listening) and acting upon information, and using appropriate syntactical and morphological structures make up some of the different facets of language abilities, all of which are a basis upon which academics build. With all those areas in which to work, it is easy to lose sight of what an individual child needs, unless his goals are specifically recorded. 94-142 has provided the impetus to do just that, through the I.E.P. Organization is demanded. It requires the plan be well throught out and this results in better therapy. Two children who are both enrolled in the speech and language program cannot be grouped together, for convenience, unless they have compatible plans for therapy. Parents are consulted much more regularly to the advantage of both the parent, who can contribute helpful background information about the child as well as therapy suggestions; and education, who can provide plans and reports about what may be recommended for the child. This increased parent contact has been both beneficial and enjoyable. I have learned a great deal about my students in parent conferences and feel both my I.E.P.'s and therapy have improved as a result. The law also provides for increased work as a team, not only between parent and therapist, but also with the school principal, classroom teacher, and possibly other teachers as well. This too is a positive result of 94-142. Open discussion and planning among several individuals who know a child results in increased knowledge and more accurate evaluation and plans. Because of the mandates of the law, the testing and evaluation procedures are utilized more regularly than before and help to provide more current information about a child's level of performance. Also, now, virtually all students are served. Those students who were put off till later were always a source of concern. Now, no more "waiting lists" exist! Additional staff has aided in the easing of this problem, some of whom were funded through 94-142. But probably the greatest benefit of this law, are the rewards reaped working with the children. Because of the increased communication between school and the home, better organization, better and/or more frequent evaluations, often more progress is made!

Just as the advantages, however, are many, so are the disadvantages in compliance with 94-142. And one of the greatest problems reflected is in the large amount of time spent in work other than therapy. The records kept and the plans for therapy and the parent contacts are primarily positive. The resulting time involved *is not*. The referral, staffing, forms to be signed, the testing, the writing of the tentative I.E.P. goals, the parent contacts to discuss the goals, the writing of the actual I.E.P. itself, all which precede even scheduling therapy is *very*, *very* time consuming. And a "break down" at any point (as the inability to contact a parent, for example) prolongs the process even further. The time needed to write an I.E.P., itself, varies in my area of speciality. An articulation I.E.P. might be completed in 10-15 minutes. An I.E.P. written with several goals, for example in the language areas, might take 30-45 minutes. Adding time for evaluations (ranging from 10 minutes to 1½ hours or more) parent phone calls (5-20 minutes), parent conferences (15-30 minutes), staffings (10-20 minutes), etc., multiplied by a caseload of 50-70 children (not to mention those who were tested and not enrolled), obviously delays the therapy starting date respectively. This is a *big* logistics problem, for the more time allotted to these activities, means less time for therapy for the children. And they are my greatest concern.

Another area of concern is within the realm of evaluation. Commercial tests, no matter how reliable and valid, are limited in scope and of course test not only what are designed to evaluate, but are influenced by other variables as well, such as environmental noise, student's attitude, and state of being (tired, anxious, etc.). This will always be true, but these factors can provide the examiner with unreliable results, due to the students reactions. One way to possibly avoid this problem might be "diagnostic teaching". This allows the evaluator to formally test, then work with the child, test more, work more, etc. for a specified period of time. These results would surely be more accurate in a few circumstances, allowing a more complete and true picture of the child's abilities and problems. 94-142 does not allow for this approach as all work must begin only after testing is completed and the I.E.P. finished. In association with this is the question of professional judgment. After work has commenced, it may be discovered that the I.E.P. goals are inappropriate for that particular child. The reasons for that eventuality are various - test results may have been invalid, parental attitude may have changed, student attitude and performance may have changed, etc. A child who cries each time he/she comes to my program, a child who refuses to do the work, a child who has made no progress over an extended period to time (say several years), all might be candidates for dismissal, in my professional opinion, without meeting the goals of the current I.E.P. I certainly would not want to continue the program if I felt the child was being hurt by continued participation. And yet, once the "diagnosis" is made, the handicapping condition has been identified and the parents can demand continued services. Am I not a reasonably competent judge of my program's effect on a child? Of course! This factor is relevant in decisions with both parents and administrators. Almost always, the formal test scores would take priority over my judgment in order to avoid the legal maneuvering some parents engage in. Parents do form an important part of the team, but they do not have expertise in my field and this should be recognized legally.

The public law, 94-142, in spirit, is excellent. It has reaching effects far beyond the education of the "handicapped". By demanding that we look more closely at students with "handicapping conditions", we are in turn, I think, focusing more clearly on all children, with a result of discovering more completely what educational program is appropriate for each. It requires that we look to the child's need not just what is convenient for our caseload. It helps organize and plan and provide therapy. It helps the children. But sometimes it seems, with all the time and "paper work" that, to quote another "special educator", the law comes first, the children and their needs come second.

OFFICE OF THE SECRETARY OF EDUCATION
ASSISTANT SECRETARY FOR SPECIAL EDUCATION AND REHABILITATIVE SERVICES
400 MARYLAND AVENUE, S.W. WASHINGTON, D.C. 20202

JUN 26 1980

Honorable Paul Simon
Chairman
House of Representatives
Committee on Education and Labor
Subcommittee on Select Education
Room 320, Cannon House Office Building
Washington, D. C. 20515

Dear Mr. Chairman:

I apologize for the delay in responding to your letter regarding my plans to resolve problems raised by witnesses at your oversite hearings. This delay was caused, in part, by the fact that my staff is making a careful reassessment of our compliance strategies. In addition, the General Counsel has been chairing a Department Task Force to review issues of compliance with both P.L. 94-142 and Section 504. I felt some of the issues related to coordination with the Office of Civil Rights (OCR) might be resolved by that group; therefore, their report would be important to this response to you.

The first issue raised in your letter concerned some problems which might be addressed through clarification of regulations. Areas identified in your hearings were misunderstandings in "related services", least restrictive environments" and "individualized education program".

Your findings are similar to our own regarding the need for clarification in these areas. As a result we plan to publish a series of policy papers to reduce these misunderstandings. The General Counsel's office is currently considering whether these papers should be published as regulation modifications or policies. As soon as that decision is made, we should be able to rapidly publish guidance in the following areas:

- component of the IEP
- provision of routine medical maintance services (e.g., catheterization)
- mental health services (e.g., psychotherapy)
- free education and coverage under private insurance plans

These papers are completed and are being reviewed throughout the Department. In addition, a draft paper regarding the appointment of surrogate parents is being circulated in the field for comment. We hope to have that policy as well as one on discipline (suspension and expulsion) ready for publication in July or August.

Finally, we have a number of policy papers scheduled for drafting. These include:

- procedures for assisting private school enrollees
- P.L. 89-313 compliance questions
- provision of extended school year
- provision of hearing transcripts and requirements on costs
- out of state placement of children
- impartiality of SEA reviewing officials
- content of prior notice provided parents
- periodic reevaluation of students

When your hearings are completed, I would like to review our list with the issues encountered. If there are any other items which surface as needing clarification, the list could be expanded.

Cindy Brown, the Director of the Office of Civil Rights, and I are working closely on establishing the priorities for policy statements and on the development of these statements. I feel I can assure you a good effort. In addition, I have made two staff reassignments to strengthen this area.

I did not mention a policy paper in the area of "least restrictive environment". This area is under review by my staff as a part of another alternative I have initiated -- development of standards. As you pointed out in your letter, there is clear evidence of compliance problems in data describing the placement of minority students in special education. Staff members are attempting to utilize the language of the Law and regulations to establish clear standards of acceptance performance. Some areas of the Law and regulations are quite expansive. Others provide minimal language for developing standards. In the area of identification, location and evaluation of handicapped children the regulations (121a.128) ask that a "practical method" be developed and implemented to determine which children are currently receiving and not receiving needed programs. This area may require an expansion of the regulations rather than the statement of a standard. In the least restrictive environment, much more is said in both the Law and regulations. Over the next few weeks, several compliance problems will be examined by our staff and our lawyers to determine the type of clarification which should be developed.

You noted that witnesses at the hearings also felt that the areas of services to handicapped preschool children, especially those between the ages of birth and three, and the training of personnel in special education needed to be addressed beyond the clarification provided in the regulations.

Section 121.300 describes the Federal requirements regarding timelines for free appropriate public education (FAPE). In general, Section 121.300 says that each state shall insure that FAPE is available to all handicapped children aged three through eighteen within the State not later than September 1, 1978, and to all handicapped children aged three through twenty-one within the State not later than September 1, 1980.

Under the statute, the age range for the child find requirements (0-21) is greater than the mandated age range for providing FAPE. One reason for the broader age requirement under "child find" is to enable States to be aware of and plan for younger children who will require special education and related services. It also ties in with the full educational opportunity goal requirements, which has the same age range as child find. Moreover, while a State is not required to provide "FAPE" to handicapped children below the age range mandated under 121.300, the State may, at its discretion, extend services to those children subject to the requirements on priorities under 121a.320 - 121a.324.

I find that as the money provided to the States from Part B increases, many use these funds to establish discretionary early childhood programs. It is my hope that these actions will result in a voluntary increase of these services throughout the states.

You also noted that witnesses at the hearings were concerned about the adequacy of training of personnel in special education. I share this concern. In this regard, States are required to provide very specific information in the Comprehensive System of Personnel Development (121.380-387) section of their annual program plans. This area is reviewed very carefully for compliance with the law by the staff from our Division of Assistance to States and Division of Personnel Preparation. This past week I wrote to all States to express my strong commitment to assuring both the letter and spirit of this section is implemented. We will watch this closely during our review of states next school year.

Finally, you asked about the coordination between the Office of Civil Rights (OCR) and the Office of Special Education (OSE). I am very pleased to report that coordination has improved substantially since the Education Department was established. Staff from both agencies are meeting regularly to review data and plan the use of these data in compliance work. As I noted above, the Director of OCR and I have established procedures to keep each other informed of policy development. The Office of Civil Rights has just established a formal system for keeping me informed of instances where non-compliance is found. In the coming weeks, a number of new procedures will be established to coordinate field work.

Your interest and support have been absolutely necessary to the improvement of the lives of disabled citizens in this nation. I look forward to working closely with you and your staff in the establishment of strategies to improve the implementation of P.L. 94-142 as well as Section 504.

Please let me know if I can be of further assistance.

Sincerely,

Edwin W. Martin
Assistant Secretary for Special
Education and Rehabilitative Services

[illegible]

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
COMMITTEE ON EDUCATION AND LABOR
SUBCOMMITTEE ON SELECT EDUCATION
ROOM [illegible], CANNON HOUSE OFFICE BUILDING
WASHINGTON, D.C. [illegible]

[illegible]

April 29, 1980

Dr. Edwin W. Martin
Deputy Commissioner
Bureau of Education for the Handicapped
4030 Donohoe Building
400 6th Street, S.W.
Washington, D.C. 20024

Dear Dr. Martin:

Having completed a series of oversight hearings in Washington last fall on P.L. 94-142, The Education For All Handicapped Children Act, the Subcommittee on Select Education plans to hold regional hearings this spring on the implementation of the Act. Before we embark on these hearings, it is important to the Subcommittee to have a clear idea on how the Bureau of Education for the Handicapped intends to respond to those issues dominating our past hearings on problems with implementing P.L. 94-142.

As you know, witnesses at our hearings agreed in their testimony that the Act is a good law. It was their consensus that P.L. 94-142 should not be amended. Testimony before the Subcommittee raised a number of problems, howdver, about improper compliance with the law.

First, it was suggested that some of these problems could adequately be addressed through clarification of regulations. From our hearings we learned that misunderstandings are common on the meaning of "related services", "least restrictive environment" and "individualized education program".

Second, witnesses discussed two areas in the education of handicapped children which need to be addressed beyond the clarification of regulations. One is the extension of services to disabled preschool children, especially to those between the ages of birth and three. The second matter relates to the inadequacy of training programs for personnel in special education.

In addition, through testimony received at our hearings, the Subcommittee's attention was drawn to the disproportionate placement of minority students in special education programs. Testimony given by the Office for Civil Rights on this subject also raised concerns about coordination between OCR and BEH on enforcing compliance with P.L. 94-142.

I would appreciate having your plans to resolve these problems, and I look forward to working closely with you on these and other matters involving compliance with P.L. 94-142.

Cordially,

Paul Simon
Chairman

PS/tbd

West Virginia Advocates
for the
Developmentally Disabled

Stuart L. May
Executive Director

MAY 15 1980

May 12, 1980

The Honorable Paul Simon, Chairman
House Subcommittee on Select Education
227 Cannon House Office Building
Washington, D. C. 20515

Re: Report by the Education Advocates Coalition on Federal Compliance Activities to Implement the Education of all Handicapped Children Act (P. L. 94-142)

Dear Congressman Simon:

On behalf of our Board of Directors, staff and handicapped children in the State of West Virginia I wish to urge your support of the above-referenced report. I would like to recommend that you adopt the report's recommendations as to a specific compliance plan and the assignment of enough trained staff to carry out the compliance plan. I also hope that you will exercise your committee's oversight powers to ensure the immediate and responsive Department of Education action adequate to provide full implementation of P. L. 94-142.

Additionally, I would suggest that you explore the possibility with Judge Hufstedler of providing a specific amount of funding for protection and advocacy in the area of special education. I refer you to the attached letter for our rationale for feeling this action should be taken.

I look forward to your support and assistance in obtaining what Congress has mandated - a free appropriate education in accordance with each child's needs in the least restrictive environment.

Very truly yours,

WEST VIRGINIA ADVOCATES FOR THE
DEVELOPMENTALLY DISABLED, INC.

Stuart L. May
Executive Director

SLM:kh
cc: Hon. Jennings Randolph
Hon. Lyle Sattes
Hon. Robert Nelson
Jane Bloom Yohalem
Hon. Shirley M. Hufstedler

1021 Quarrier Street, Suite 411, Charleston, WV 25301 (304) 346-0847

Mr. & Mrs. Robert B. Meihaus
#7 Outer Ladue
St. Louis, Missouri 63131

August 5, 1980

Mrs. Shirley M. Hufstedler
Secretary of Education
Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202

Dear Secretary Hufstedler:

In April, 1978 we issued a complaint with the Office of Civil Rights based on section 504 of the Rehabilitation Act of 1973. The OCR Offices in Kansas City instituted an investigation pertinent to our complaint (Meihaus-Covert #00 7780052) in May, 1978. Our complaint alleged that children and individuals with Specific Learning Disabilities (SLD) were denied an appropriate, compensatory education in St. Louis County public schools. We submitted volumes of facts and data to validate our complaint.

Two and a half years later the complaint and investigations are sitting on the back burners. The dual system of education in St. Louis County that denies SLD children an appropriate, compensatory education is alive and well. Special School District, created for the education of the Handicapped and the home school districts (23) continue to discriminate against individuals with Specific Learning Disabilities (SLD). Labeled to fit existing programs of the SSD, they are denied an education equal in quality and quantity as their unlabeled peers.

SSD programs for the BD/LD in a cross-categorical fashion violate the rights of SLD by not providing them with a compensatory education. The emotionally disturbed, labeled as behaviorably disabled, are by the same token deprived of the educational, psychiatric, and counselling services they need.

The enclosed copies of "Insights" point clearly to the fact that SSD has "no new programs planned" for the 1980-81 school year. The fact is that SSD has never had appropriate evaluations or compensatory education for SLD. As non-readers, non-writers, and non-computers, SLD adolescents are pushed through 12 years of free, public education and come out double-dipped in illiteracy and unemployment.

The enclosed clipping from the Post-Dispatch of July 31, 1980 illustrates the philosophy of our LEA - Ladue School District "Identifying and prescribing for handicapped children is a judgment made by special district."

This is better know as "pass the buck syndrome," after all, SSD gets the big slice of our tax dollars ($4,700 a year per SLD, Ladue gets $2,000).

We realize that for HEW and OCR to admit the validity of our complaint will cause great embarrassment to the Missouri State Department of Education because the FY Plans for "1979," "1980," and "1981-83" were submitted and accepted under the shadow of our complaint. But if it means a new lease in life for our children, a few red faces are better than thousands of children who are denied an appropriate and compensatory education.

We respectfully ask you to look into our complaint. HEW and OCR have all the facts and records. We hope to make our plight known to our legislators because we may need to amend Missouri Law 474 to avoid the discriminatory practices now sanctioned by our State Department of Education regulations.

But if you, as the head of our Department of Education, can help us resolve this issue more expediciously, we would be most grateful. Time weighs heavily on our children, they get a year older every year and two years behind in school.

Sincerely,

Ena B. Meihaus

Robert B. Meihaus
#1 Outer Ladue
St. Louis, MO 63131

EBM:prw

Encls.

cc: Dr. Edwin Martin, Jr. - OEH
Mr. Jesse High - OCR, Kansas City, Missouri
Mr. & Mrs. Lewis Covert
Mrs. Harriet Woods, Missouri State Senator

8/5/80

9/21/80

TO WHOM IT MAY CONCERN:

The Departments of Ecucation both regular and special education of the State of Mo. do not recognize dyslexia, visual and?or auditory perceptual problems as medically diagnosed physical disabilities that can be educationally remediated or compensated for.

By negating the cause they do not have to worry about effect. Individuals with specific learning disabilities in St. Louis County are denied an opportunity to learn or be taught to the level of their intelectual potentials or their God given manual dexterity. As such they finish or are pushed through 12 years or more of free public education with a piece of paper that attests to the fact that they have occupied a seat in a public building.

Twelve years of being counted as public school students has provided the special and home school districts between $4000.00 to over $6000.00 per child per year. In effect this very generous provision of our tax money has produced a $1.98 education for our children (Data submitted).

Specific Learning Disability individuals lumped into cross categorical or multicategorical programs of the SSD & the 23 componet LEA finish school double dipped in illiteracy and unemployable (Data submitted).

SLD'S lucky enough to have parents that could afford to purchase educational services; tutoring in reading, mathematics, typewriters and typing instruction, calculators, taped textbooks, etc. are few. Most adolescents have joined the lists of drop-outs, pushed-outs or flunked-outs. We will not dwell on the tragic stories but these also teach us the lesson that we Can't conimue to ignore the tragic results of neglect in education of the individual with specific learning disabilities.

What are the results in dollars and cents?

1. SLD students finish free public ecucation as candidates for unemployment.
2. Labeled as non-readers, they are illiterates and as such don't qualify for Voc-Rebiletation because they are unemployable.
3. SLD'S do not qualify for Voc-Technical Schools because they have not been taught to read or write or compute to the level of 9th Grade
4. Stamped by the BD/LD/MR multicategories, SSD & LEA they are viewed by peers and neighbors as severely emotionally disturbed or retarded.

In dollars and cents they end up candidates for welfare(tax money) food stamps(tax money), bread lines(tax money), mental health programs (tax money), jails(tax money), drug abuse(tax money), abused children + future abusers(tax money), etc.. what a waste of human potentials as intelligent, creative and productive members of society.

SLD'S will only pass through the school system once; do the job you were hired to do, the job you are payed to do. If you "do not want to or do not know how to" let go of our tax money, let go of our children with specific learning disabilities and we parents will hire and pay for the educational services that our children are entitled to under the law of this land. Our children can't afford a free , public education in Mo.

O.S.E. ~~E.~~ and O. C. R. have stacks of data and materials to validate any statement I have made from 1970 to 1980.

Eva B. Meihaus
Robert B. Meihaus

9/22/80

Submitted to the Subcommittee of Select Education — PL 94-142 Oversite Hearing
Kansas City, Mo. 9/22/80
Enclosures included

NOTES

Two Teams - Taxation without cooperation or implementation!
SSD -- LEA

The LEA position is that teachers, teachers' aides, teaching aids (taped textbooks, recorded lessons, typing lessons, braille books, typed lectures, etc.) are the responsibility of SSD -- because they get the dollars. SSD brushes this *off* -- "after all they are mainstreamed, not in our buildings."

Where do handicapped children fit into these two opposing teams? If the IEP does not specify educational aids, it may be October or November before parents can fight their way through to get a token compliance.

Mainstreaming is not easy for the handicapped, but it is by far better than no education at all!! Cross-categorical education, by osmosis, adds new handicaps to our children-- SLD can't learn in a curriculum watered down for the retarded, or in a "dog obedience" school for the emotionally disturbed (ED). SLD need a compensatory education, with adaptations in the regular classroom and tutorial instruction in reading, writing and math as needed and as long as needed.

Eva Meihaus 1979

June 27, 1980

To: Congressional Hearing on Implementing PL-94-142

When a hearing is held to examine the effectiveness of programs that are derived from implementing PL 94-142 and Section 504 regulations, the consumers and families that have the most need to respond and that you would gain the most input from, are, for the most part, automatticlly exclued from a hearing held during working hours of a work-day.

As parents of a developmentally disabled, teenaged child (son), we are convinced that the only logical, effective and appropriate educational experience must come through the public educational system. Our son has experienced a wide variety of so-called educational settings from private or agency isolated and restricted schools to involvement in the Denver Public School system. We have encouraged the public school systems, and particularly the Denver Public School system, to implement the mandates of PL 94-142 and applauded their commitment to become a model system that would provide and exceed the educational requirements that these laws specify as belonging to the handicapped students. We are still waiting for this to happen.

The Denver Public Schools have evolved a system designed to meet the bare minimum requiremtns of PL 94-142 and Section 504, while circumventing the real intent of these laws.

Our personal experience has been 2 years of having our son subjected to established programs rather than developing, as the law requires, programs to meet his specific needs. For the past year he has attended school in a program that we found inadequate and for which we would not sign the IEP as written. We spent the entire year and a number of meetings with Denver Public School staff and administrators in an attempt to develp a productive and acceptable IEP. In late May, 1980, we finally acheived and have written up what appears to be a correct educational program. To accomplish this, we had to bring in and have in attendance at the IEP meeting experts in the various educational disciplines. To develop an adequate speech therapy program we had an outside speech therapis expert outline the needed program because the Denver Public Schools system would not recognize this need.

The Denver Public Schools system provides independent, tutored reading development classes for non-handicapped students, but will not provide this same assistance to the developmentally disabled students. After a year of asking for this service, we are still not sure that it will be provided.

Adequate physical therapy and occupational therapy is either not provided or is provided only on an intermitten basis due to a "shortage of staff". It is interesting to note that the Denver Public Schools budget for 1978-79 for special education was not entirely used and some of those monies were turned back. However, other areas of the DPS system over-spent their budget.

When we finally achieved what we hope is an acceptable and adequate IEP for our son, we have solved only a small part of the problem. We, as parents, must now assume the role of monitors to see, first, that the IEP is indeed implemented, and second, that the quality of the program meets our son's needs.

It has taken us 2-years to reach this milestone! What is happening to those students whose parents are unable to effectively advocate for them or have no outside advocates?

The bottom line - the PL 94-142, PL 94-482, Section 504 and the Colorado statutes dealing with the ducation of handicapped children are clear both in their intent, their philosophy and their direction, but are not being implemented in fact or in spirit by the State of Colorado.

Mr. & Mrs. William F. Huth
2992 S. Wabash Circle
Denver, CO 80231

INDIAN PRAIRIE COMMUNITY UNIT SCHOOL DISTRICT 204
Central Administration—Waubonsie Building
P.O. Box 185, Eola, Illinois 60519
Phone 312–851-6161

OCT 20 198

October 14, 1980

Dear Representative Simon and Members of
the Subcommittee on Select Education:

I am an executive board member of a special education cooperative in DuPage County, a western suburb area of Chicago, Illinois. There are 29 public school districts in our cooperative and we serve over 70,000 students. In my role as a executive board member of the cooperative, I wish to indicate some general concerns about Public Law 94-142.

The schools have served special education students for many years. We will continue to provide the services they need. The problem is that some students should not have a public school responsible for their care.

The schools seem to be getting more into the role of a department of mental health. Students either so grossly mentally ill or physically deficient are being totally handled by the public schools. The parents and other state agencies indicate that under Public Law 94-142, the schools must handle the students' education. This then translates to the school paying for a students housing, food, psychiatric care, social work, and whatever can be called a "related service".

I've had to sit at staffings where psychologists indicate a student is severely mentally ill and need of institutional care and state agency mental health people say - "it's part of his education".

In closing, let me quote an editorial in the Chicago Tribune, August 4, 1980;

COMMON SENSE REQUIRES A LIMIT

> *"Most citizens approve the assumption by society of an obligation to assure such needed services as elementary education and essential medical care, often by statutory or even constitutional language. But most people, also, are appalled by the highly expensive services to individuals sometimes incurred. The New Jersey Supreme Court has acted to set an outer limit on the state's duty to finance the education of mentally retarded children of wealthy parents.*

> The court ruled that the New Jersey constitution does not require the state to assume and indefinitely the burden of educating a crib-confined boy of 10 who has a mental age of one year, or a girl of 19 with a mental age of 18 months. "It is neither realistic nor meaningful to equate the type of care and habilitation which such children require for their health and survival with education in the sense that that term is used in the constitution," the court said.
>
> It offends common sense to interpret a mandate to "educate" as requiring vast public expenditures on people who are, as the New Jersey court puts it, "so severely impaired as to be unable to absorb or benefit from education." It is good that the court recognized that there are limits to the state's mission to educate.
>
> It may seem heartless for the state to limit what it will do for badly damaged specimens of humanity. But on the other hand it clearly is extravagant to devote vast sums out of what ought to be (and usually is) a limited public treasury to the nurture of a few with no chance for a normal life, while failing to provide the little help that would enable many others to have socially useful careers."

Please enter this testimony into your oversight hearings on Public Law 94-142.

Sincerely,

Charles F Pagels

Charles F. Pagels
Director of Education

CFP:sm

UTICA CITY SCHOOL DISTRICT
13 ELIZABETH STREET
UTICA, NEW YORK 13501

EDWARD J. PERRY
SUPERINTENDENT OF SCHOOLS

October 10, 1980

Honorable Donald J. Mitchell
Congressman - 31st District
6 Steuben Park
Utica, New York 13501

OCT 16 1980

Dear Congressman Mitchell:

On behalf of the Utica School District, I wish to express our concern over the proliferation of legislation emanating from the federal government dealing with students with handicapping conditions.

Initial reaction to federal legislation in this area was greeted with enthusiasm. Indeed, it was perceived that some concrete assistance in the form of guidelines and finances would reach local school districts struggling to provide quality education to handicapped children. The dream is now assuming the proportions of a nightmare for the following reasons:

1. The guidelines defining the handicapped are too broad and all inclusive.
2. Total implementation within an unrealistic time frame is beyond the ability of a district to pay and beyond the capability to fulfill.
3. Able, capable professional staff is in short supply in view of the high degree of specificity of "prescription" which is required of the districts.
4. Advocacy groups, financed by the state and/or federal government agencies, tend to generate more heat than illumination.
5. The threat of the withdrawal of federal funds for alleged non compliance is harsh punishment for districts who cannot deliver because their resources are limited in the first place.
6. All legislation governing students with handicapping conditions seems to be of a highly restrictive nature, making more remote and illusionary, the concept of home rule.

If the intensity of my reaction exceeds the responses of other school superintendents, it is perhaps because Utica is the largest community in your congressional district and is burdened with more people who need help and less per capita income to perform the task appropriately.

Any measure which you can take to alleviate the problems and maintain the essential central theme, namely that more needs to be done for handicapped individuals, will be greatly appreciated.

Sincerely yours,

Edward Perry

Edward J. Perry
Superintendent of Schools

EJP/rmb

The Utica City School District is an equal opportunity organization that does not discriminate on the basis of race, creed, sex or handicapping conditions.

The Advocacy Office, Inc.

Suite 100, Watkins Building
510 George Street
Jackson, Mississippi 39201
(601) 944-0405

MAY 7 1980

Board of Directors

Billy Potts
President
R. L. Robbins
Jean Brown
[redacted]
Bruce Martin
Mary Cuddy
Administrative
Assistant

Board of Advisors

Elmo Barber
Ed Ball
Andy Bires
Melinda Broadhurst
Bill Cobb
Bill Cooke
Marjorie Dear
Robert L. Ebony
Jimmy Daniels
Dave Gonzalez
Bill Jordan
Marshall Magee
Adine Matthews
Willie McIntosh
Charles E. McLemore
Johnny Della Mize
W. R. Newman
Ellis Nordan
E. U. Parker, Jr.
Scott Salter
Becky Slagle
Jim Stanbridge
Harvey C. Sullivan
Norman White
Sue L. Wilson

May 5, 1980

The Honorable Paul Simon
The United States House of Representatives
227 Cannon House Office Building
Washington, D.C. 20510

Dear Mr. Simon:

Please find attached a copy of a letter to Secretary Shirley Hufstedler in regard to the Education Advocates Coalition's report concerning the lack of activities to implement P.L. 94-142. As stated in my May 2, 1980 letter, this report is an accurate indicator of the widespread failure of the Bureau of Education for the Handicapped to ensure that State Educational Agencies and local educational units comply with the Education for All Handicapped Children Act. The result has been a nationwide failure to provide handicapped children with appropriate special education and related services.

In view of the prevalence of the report's noncompliance issues, I, therefore, urge the House Subcommittee on Select Education to exercise its oversight powers to ensure the Department of Education takes corrective action to remedy those problems described in the Coalition's report and to fully implement P.L. 94-142.

If you have any questions or if I can be of any assistance on this matter, please do not hesitate to contact me.

Sincerely,

Bill

Billy Potts
Director

sj

cc: Secretary Shirley Hufstedler

JUL 14 1980

School District Number Twenty
UNITED STATES AIR FORCE ACADEMY, COLORADO
THOMAS S. CRAWFORD, Ed.D., Superintendent of Schools

July 10, 1980

The Honorable Ken Kramer
1724 Longworth House Office Building
Washington, D.C. 20515

Dear Ken:

This letter is written in reference to your letter of 6/11/80 regarding the reauthorization of Public Law 94-142, and I am responding as the authorized representative for Mr. John Asbury.

In my present capacity I serve as Director of Special Programs for School District #20, a position I have filled for the past two years. Prior to my administrative experience, I functioned as a school psychologist for a total of eight years, two in a California school system and six years in a comparable position in Colorado.

I would like to begin by complimenting those individuals responsible for the formulation and passage of P.L. 94-142. I believe the act reflects the providence some of our legislators manifest, but more importantly, I see it as an attempt to provide equality of educational opportunity for all citizens of our country. As an advocate of handicapped individuals I congratulate those responsible for laying the foundation for an extremely important project.

In an attempt to assist you and the other members of the Subcommittee on Select Education, I would like to share some of my experiences and observations of P.L. 94-142 and other educational programs for the handicapped. I feel one significant flaw in the act is the lack of clarity or definition of where the public schools responsibility begins and where it ends. I can assure you that the law as currently being interpreted, by both non-educational advocates and some courts across the country, places the responsibility for any and all costs incurred in providing education to handicapped students on the school system. In many cases this is true regardless of the nature of the handicap--where it manifests itself, or the degree to which it interferes or fails to interfere in the learning process.

Douglass Valley Elementary School
USAF Academy, CO [illegible]

Edith Wolford Elementary School
[illegible]
Colorado Springs, CO [illegible]

Mountain View Elementary School
[illegible]
Colorado Springs, CO [illegible]

Administration Office
Pine Valley
USAF Academy, CO [illegible]

Air Academy High School
USAF Academy, CO [illegible]

Air Academy Junior High School
[illegible]
Colorado Springs, CO [illegible]

Pine Valley Elementary School
USAF Academy, CO [illegible]

Rockrimmon Elementary School
[illegible]
Colorado Springs, CO [illegible]

Woodmen-Roberts Elementary School
[illegible]
Colorado Springs, CO [illegible]

Due to the ambiguous wording in such areas as related services, least restrictive setting, individualized educational programs, and free appropriate education, public schools are being asked, and in some cases ordered, to assume more and more of the responsibilities of parents or other public agencies. I am aware of school districts who are paying the entire cost of residential care and treatment for selected students whose educational programming can only exist in a residential setting. Was it the intent of the law to make public schools responsible for such care? Are public schools solely responsible for the treatment and rehabilitation of mental and physical handicaps? I feel it would be a tragic mistake and misuse of taxpayer's dollars for schools to add direct treatment services to their primary goals of educational preparation and vocational training. In addition, there are school districts who operate at the other end of the continuum and limit their involvement with handicapped students by providing only basic reading, writing, and arithmetic. Fortunately, they are few in number; however, I include them to illustrate the inconsistency with which the law is interpreted and applied.

In addition to my ethical objection to the schools assuming an ever increasing role as a social agency, I feel that funding from local, state, and federal levels is wholly inadequate to meet the mandates of P.L. 94-142 as presently interpreted. The costs for such items as salaries, fringe benefits, transportation, materials and facilities for handicapped students are staggering. For the 1979/80 school year District Twenty will have spent nearly a million dollars in order to meet the identified needs of 429 handicapped students. That amounts to twelve percent of the total operating budget to educate eight percent of the student population. My concern is not with spending whatever dollars are required to educate the student, but that public schools must provide related services such as parent counseling and training, medical services, some aspects of transportation when placement is outside of district boundaries, and residential care. Schools, as they are presently funded, are in no position to assume the financial burden of the above mentioned services.

The ambiguous wording of the act also has cost the district a tremendous number of man hours and to alter the roles of several key staff. One case in our district which evolved early in January 1980, has consumed over 400 man hours and a thousand dollars in fees in an attempt to determine which of our programs was appropriate for the student, who was responsible for what, and how services would be provided. I might add that the case still has not been resolved and it is my professional opinion that the needs of the student are still not being met. Public schools are ill prepared for such circumstances and cannot possibly afford the exorbitant costs involved and continue to meet the educational needs of its total student population.

The due process clause has also generated many problems. There is no question that certain steps must be included to insure the rights of all parties involved; however, I believe the system actually impedes rather than facilitates the delivery of identified services. In certain cases professional educators must delay the implementation of services or terminate their involvement and invest a significant amount of time and money to justify what they intend to do or what they are doing. Simply stated, education is guilty until proven innocent. As a professional in my chosen field I am dismayed at having to spend a disproportionate amount of my energy and time on such limited issues. Educators should be acknowledged for their talents and be allowed to practice their vocation. I would like to see the due process procedure shortened and the burden of proof placed upon the parents or advocates. In addition, the costs incurred in the process should be the responsibility of the respective parties and not solely the responsibility of the school.

I am also concerned with another section of the checks and balances system within the act. In the state of Colorado federal dollars are spent to partially fund the Legal Center for Handicapped Citizens--a center to act as a watch dog over the public schools. My involvement with this agency has been, in general, anything but positive or productive. It is my opinion that in most cases they play a significant role in creating an adversarial relationship which overshadows the needs of the student rather than developing a partnership to meet their educational needs. I was involved with the Legal Center in one case this year and it is my opinion that if the recommendations of District #20(based upon an evaluation by an independent party at district expense) had been considered objectively, the subsequent arrest and incarceration of the student could possibly have been avoided. I believe the process in Colorado (Legal Center) accomplishes too little for too few to justify its existence. The money would be better spent in educating the public and creating an educational resource agency available to both parents and public schools.

In closing, I would recommend that in the process of retooling P.L. 94-142 the responsibilities of public schools be more clearly defined. I would hope that the primary focus of our programming would remain that of education with a secondary goal of supporting the treatment and rehabilitation of significant handicapping conditions. Funding formulas must be modified to provide school districts with the funds necessary to insure full compliance with the law. Application and accountability procedures must be revised in order to make the system practical and efficient.

I hope that my observations and comments regarding P.L. 94-142 will be of assistance in your present endeavor. If I can be of further assistance please feel free to call upon me.

Sincerely,

Steven J. Pratt

Steven J. Pratt
Director of Special Programs

SJP:ss

CENTER FOR LAW AND EDUCATION, Inc.

Gutman Library, 3rd Floor
6 Appian Way
Cambridge, Massachusetts 02138
617-495-4666

MAY 13 1980

May 9, 1980

Paul Simon, Chairman
House Subcommittee on Select Education
227 Cannon House Office Building
Washington, D.C. 20510

Dear Congressman Simon:

The Center for Law and Education, funded by the national Legal Services Corporation to provide legal assistance to low income persons and their advocates on issues concerning education law, supports the Report by the Education Advocates Coalition on Federal Compliance Activities to Implement the Education for All Handicapped Children Act (P.L. 94-142).

The Center for Law and Education has long worked as an advocate for students and parents in issues relating to the education of the handicapped. As a national law firm, working with parents, students, and advocates in all states across the nation, we have become familiar with the disadvantages inflicted upon students in need of special education, the importance of full implementation of Public Law 94-142, and the extent to which full compliance is still an unattainable goal in many jurisdictions across the country. In our consultations and representation, it has become obvious to us that in each state there is failure to achieve full compliance with Public Law 94-142 and that this non-compliance is due, in large part, to the failure of state departments of education and the Bureau of Education of the Handicapped to adequately monitor and enforce compliance with the federal statute.

Because of the importance of special education issues and the implementation of Public Law 94-142, we urge you to exercise your oversight, and that of your Subcommittee, to ensure immediate and responsive action by the new Department of Education to carry out the recommendations contained in the report of the Education Advocates Coalition and to assign sufficient staff and resources to adequately monitor and enforce compliance with Public Law 94-142.

Sincerely yours,

Diana Pullin

Diana Pullin
Staff Attorney

DP/kg
cc: Secretary Hufstedler
Jane Bloom Yohalem, Mental Health Law Project
Daniel Yohalem, Children's Defense Fund

June 2, 1980

Hon. Thomas F. Eagleton
United States Senate
Washington, D. C. 20510

Re: Public Law 94-142,(CFR45) (Education of the Handicapped)

Dear Honorable Senator Eagleton:

We would like to see legislation instituted, to amend and clarify the "descriptions" of catagory coverages, for children with handicaps, especially regarding Specific Learning Disabilities and Visual Impairment. P. L. 94-142 is an excellent law, and of great assistence to enable our here-to-fore educationally excluded children to now receive an appropriate education. We do not mean to detract from that effectiveness, but to further clarify and improve, so needs can be met with a greater degree of level of assistance for our children, within our public school systems.

We request this legislative change, because, with the present wording in the law, regarding descriptions of handicapping conditions, some of our state's children are "falling through the cracks", so to speak. Schools are finally reading the law (in some cases), but are not interpreting it, nor yet using it in the effective, meaningful, intent and purposes we believe were the moral reasons that caused P.L. 94-142 to be implemented in the first place. Our child is a particular example, and had we not intervened, and then had our state board of education not approved a somewhat inovative proposal extended by us, they would have had to technically further discriminate against our daughter, regarding her educational provisions, for her needs had to be met by a "combination" of provisions as now outlined in the law, and as now not supposedly possible. However, since we already had a HEW determination that the school WAS already discriminating against her, they chose to not further complicate the situation, and accepted our proposal for a "combination" plan, to completely meet her educational needs.

The problem comes when a child has BOTH Learning Disabilities, AND Physical Handicaps. The way the law now reads, and the way most schools are interpreting and implementing programs, is that the physical handicaps takes preference in provisions, to the EXCLUSION of provisions for the learning disabilities. That leads to further school and academic failure, and defeats the entire purpose of a free and appropriate public education, as proposed by P. L. 94-142.

(to Pg. 2)

The theory behind the implementation, as the law now reads, is that when physical needs are met, the learning will automatically follow. However, if a child IS ALSO LEARNING DISABLED, the physical needs assistance IS NEITHER APPROPRIATE, NOR SUFFICIENT!

We have been in contact with Dr. William Holloran, of the Bureau of Education of the Handicapped, 400 Maryland Ave., S. W., in the Donohoe Building there in Washington, and we ask that you or your constituents please contact that office, as they can advise possible better wording, so the intent,AS WELL AS THE LETTER OF THE LAW can better serve our children, to receive an appropriate educational assistance to meet ALL OF EACH CHILD'S UNIQUE INDIVIDUAL NEEDS.

If you would like further information, explainations, or detail of what we are proposing, or what we feel is needed, please contact us. There is an excellent article by Wm. V. Padula, O.D., who is the Director of Vision Research at the Gesell Institute of Human Development, entitled "A POINT OF DISCRIMINATION-P. L. 94-142". This article describes the situation that, unfortunately, is the instance in far too many schools. It also describes exactly how our own school system responded, even after our HEW investigation, until we intervened for our daughter. I am enclosing a copy of that article, for your benefit. We pray for your understanding, and for corrective legislation!

Respectfully,

Mr. & Mrs. Steven Quesenberry
302 Pilgrim St.
Wentzville, Mo., 63385
Phone: 1-314 area--327-8496

cc. Sna

1 Four Page Enclosure

COMMITTEE ON ADVOCACY
FOR THE
DEVELOPEMENTALLY DISABLED, INC.
BOX 734, FREDERIKSTED
ST. CROIX, U.S. VIRGIN ISLANDS 00840

PROTECTION
AND
ADVOCACY COUNCIL

MAY 7 1980

May 2, 1980

Congressman Paul Simon
Chairman of the House Committee
on Select Education
227 Cannon House Office Building
Washington, D.C. 20510

Dear Congressman Simon:

This is to urge your exercise of the powers of the Subcommittee on Select Education in ensuring immediate and responsive action by the Department of Education to provide full implementation of the Education for All Handicapped Children Act (PL 94-142).

The report of the Education Advocates Coalition very accurately identifies ten areas of noncompliance which appear to exist throughout the states and territories. The recommendations for compliance efforts are also quite relevant to the problems abserved by the Protection and Advocacy System in the Virgin Islands.

Sincerely yours,

Russell D. Richards

Russell D. Richards, ACSW
Director

cc: Judge Hufstedler
Delegate to Congress
Melvin H. Evans.
Education Advocates Coalition

PREPARED STATEMENT OF ALLENE RICHARDSON, PRESIDENT, COLORADO CHAPTER, NATIONAL SOCIETY FOR AUTISTIC CHILDREN, INC.

Generally speaking, the Special Education programs in the Denver Metropolitan area are very good. Many autistic children are being greatly helped, and the basic process is working in regards to IEP's, due process, etc. However, throughout the state, many needs are not being adequately met - mainly due to the definition of handicapped children in the P.L. 94-142 regulations. Autistic children are categorized as "seriously emotionally disturbed," which is not appropriate.

The National Society for Autistic Children (N.S.A.C.) has consistently opposed this categorization ever since the regulations were published in proposed form and after their final publication. A clear and separate definition of autism in the regulation is imperative. Accurate recognition of the problem can lead to appropriate teacher training, expanded funding, and better education for children with autism.

Colorado N.S.A.C. believes that children with autism could better be served by (1) improved funding, and (2) a separate definition of autism in the regulations. If any further information is needed, please contact me.

Allene Richardson

Allene Richardson
President, Colorado Chapter

Colorado Developmental Disabilities Council
CDDC

4126 South Knox Court
Denver, Colorado 80236
(303) 761-0220, Ext. 332

June 27, 1980

Select Education Subcommittee of the U. S. House
of Representatives Committee on Education & Labor

The Colorado Developmental Disabilities Council wishes to express the following concerns regarding the implementation of PL 94-142, Education for All Handicapped Children Act, in Colorado.

While the Act complements our State Act for the education of handicapped children and significant progress has been made since its passage, we believe the State still has much to accomplish before all of our handicapped children are receiving the appropriate education to which they are entitled.

Specifically, we are concerned that children in rural areas of the State are either unserved or inappropriately served. This happens because funds from PL 94-142 are inadequate as are funds from the State Legislature. In addition, rural school districts are not wealthy enough due frequently to a low revenue base to supplement funds to support the programs required by the state and federal law. (We find it justifiable that these districts are angered by this situation.)

The Developmental Disabilities Council supports full disclosure to parents and guardians of their rights under state and federal law and believes this is the responsibility of the State Department of Education. We realize that some efforts have been made and some parents are informed, but not nearly enough. Again, especially in rural and low-income areas, we find parents who know nothing about the laws and their rights. The Department must provide more information and technical assistance to school districts to enable and encourage them to educate parents. The D. D. Council, through its Regional Councils and varied membership, stands ready to assist in this effort.

Currently in Colorado, many handicapped children are educated in segregated schools and classrooms. This is usually in the Community Centered Program and institutions funded by the Department of Institutions. School districts allow this to happen and use the programs for placements because it relieves them of the responsibility of providing the program, but they ignore the fact that children are being denied the benefit of learning through interaction with non-handicapped students. In claiming that children are being served in the Least Restrictive Alternative, what is meant is the Least Restrictive Alternative available. We believe this is contrary to the law.

Finally, the D. D. Council opposes the unnecessary segregation of minority students in classes for handicapped students and are aware that this happens. We believe that districts must make every effort to insure that discriminatory testing and evaluation procedures are not the cause of such over-inclusion.

In conclusion, we support the comments submitted by the Legal Center for Handicapped Citizens and the Association for Retarded Citizens. We thank you for this opportunity and for your interest and concern.

Very sincerely,

Alice Kitt

Alice Kitt, Vice-Chairperson
Developmental Disabilities Council

AK:ae

BILL ROYER
11th District, California
Washington Office
[illegible] Longworth House Office Building
Washington, D.C. [illegible]
[illegible]
Committees:
Public Works and Transportation
Science and Technology

Congress of the United States
House of Representatives
Washington, D.C. 20515

District Offices:
Bay View Plaza
[illegible] South El Camino Real, Suite [illegible]
San Mateo, California [illegible]
(415) [illegible]

Daly City City Hall
[illegible] and [illegible] Avenue
Daly City, California [illegible]
(415) [illegible] Ext. [illegible]

July 2, 1980

JUL 08 1980

Honorable Paul Simon, Chairman
Subcommittee on Select Education
320 Cannon HOB
Washington, D.C. 20515

Dear Chairman Simon:

I understand that you have completed your series of hearings relative to the implementation of PL 94-142, but that the hearing record is still open. I ask that this letter be entered into the record of those proceedings.

I have received petitions bearing the signatures of 270 individuals involved in educational programs benefitting the handicapped in my district. Most of the members of this group feel that PL 94-142 is basically an excellent law. However, there appears to be unanimous displeasure with the implementation of the law.

The consensus of opinion among those who are responsible for attempting to make the various programs work is that implementation would be better served if left to local control. Apparently, the programs suffer, and the children who are supposed to benefit from the programs suffer, due to the deluge of unnecessary paperwork imposed upon teachers, counselors and administrators at the local level. Therefore, the individuals involved in special education programs for the handicapped at the local level in my district have proposed the following changes in implementation of the law, which they seek through amendments to PL 94-142:

1. That each Local Educational Agency be allowed to determine the most effective and efficient respective method of implementing the requirement for parental involvement to be included in phases of child referral, assessment, progress evaluation and dismissal.
2. That while testing remain an integral part of the programs, formal tests are to be administered at the discretion of the Local Educational Agency.

3. That all forms, records and program planning, as required by law, will be developed by the Local Educational Agency.
4. That the Local Educational Agency have the flexibility relative to the composition of the annual review committee, the method used, and scheduling of the required annual review held for each child.
5. That the Local Educational Agency be responsible for monitoring and reviewing the implementation of the law as amended.

I ask that your committee give due consideration to the recommendations contained herein, for they come from those who are ultimately responsible for delivering the services to the children who need them.

Thank you for your consideration.

My best regards,

BILL ROYER
Member of Congress

BR/mjb

STATEMENT OF MARY LOU ROUSSEL

RE: HB 282
A CASE IN POINT: ST. LOUIS COUNTY, MO.

1.) My child was tested in Parkway School District in first grade in 1971-72.

2.) He was tested, evaluated and diagnosed by a pediatric neurologist in May 1972, with a report going to Parkway.

3.) He spent three years in a private school (until May, 1975.)

4.) PL 93-112 Sec. 504 became Federal law in 1973, with a deadline compliance date of Sep. 1, 1978.

5.) He was tested, evaluated, and certified "learning disabled" by the Special School District of St. Louis County in Sep. of 1975.

6.) He spent three years in a Special District Phase II class in a Parkway School (being integrated back into regular classes as he seemed able) from the Fall of 1975 to June, 1978.

7.) I contacted Parkway school personnel, administrators, and a school board member, as well as various employees at Special District beginning in Nov., 1977, re: what was being done to comply with Federal law by Sep. 1, 1978.

8.) An IEP conference was held on May 1, 1978, regarding my child's needs, in the presence of both Parkway and Special District personnel, at which I requested "by-pass" methods be used when he was to be mainstreamed in the Fall of 1978.

9.) When the school year of 1978-79 began, he was mainstreamed into Parkway. There was no Special District itinerant nor even a list of children in need of Special Services available to the Parkway personnel in his building until four or five weeks after school started.

10.) I have had to transport my child to a school outside the boundaries of our neighborhood school because both the curriculum, the building, and the school personnel of the neighborhood school were inappropriate to his needs; I received morning bus service in Nov. when I informed Parkway they were in non-compliance with Federal law.

11.) He is presently receiving, I believe, an inappropriate education in a hostile and uncooperative environment due to a lack of identified fiscal responsibility and the ignorance (i.e. lack of learning) on the part of personnel at all levels of Parkway.

12.) My child's specific learning disabilities are dyslexia (problems with reading and the inability to spell) and dysgraphia (severe problems with writing.) His IQ is above-average, in the top 15th percentile) while his achievement level in spelling is in the lower 4th percentile of children tested nationally.

STATEMENT OF JOHN AND MONA BICKERS

Kevin Bickers, 14
8th Grade, Parkway East Junior High School

Early testing and dedicated teachers at Mason Ridge (Parkway District) suggested learning difficulties for Kevin, but thorough testing had to be done outside the school. Reading difficulties were overcome in large part through a phonetic program in a special class at St. Louis University paid for by his parents. Still, no special facilities were provided and only the occasional "dedicated" teacher could properly touch his bright but troubled mind. As he progressed, math problems not offering the "phonetic" solution possible in reading caused problems in science as well as mathematics classes. Individual teacher time in Junior high has been minimal. No resource room is provided and those teachers assigned to give special help are not supported by the school administration. Both time and facility are often withdrawn from LD children to meet the needs of the greater school population. This has tended to discourage even the competent and qualified persons capable of working with LD youngsters. The tone of school administration is, "They don't fit in well with our system so we will simply ignore them."

Needed are the facilities and dedicated teachers...and an administration that believes that learning disabilities exist, and can be overcome.

John Bickers Mona Bickers

STATEMENT SUBMITTED BY SUSAN SAPPINGTON, MOTHER, ST. LOUIS, MO.

CASE REPORT INVOLVING JENNIFER SAPPINGTON
&
ST. LOUIS COUNTY SPECIAL SCHOOL DISTRICT

Our daughter Jennifer Sappington, age nine years old, has been serviced by the St. Louis Special School District since June 1976. She has benefitted tremendously from placement in an oral program for the hearing impaired, and receiving OT-PT services irregularly. Jenny is a child with a moderate to severe hearing loss and spastic cerebral palsy, necessitating her using crutches to walk. After having been in four schools in five years she has come to be placed in the third grade of her home school district and is still receiving support services from SSD. The staff of the ORAL PROGRAM FOR THE HEARING IMPAIRED and the PHYSICAL & OCCUPATIONAL Therapists have been excellent, and along with the co-operating school district teachers, can be credited for Jenny coming this far. Although needing the use of a hearing aid and crutches, Jenny is an active third grader who loves brownies, ice-skating, swimming and is learning to play the violin.

Our problems with SSD lay in securing the support services Jennifer needed in order to have come this far. Our main concerns are the difficulties presented because of changing schools almost every year, and being unable to get physical and occupational therapy at the beginning of each school year. In fact during two of the years she did not receive therapy until February and March. Following is a list of the schools and therapy starting dates during her years with SSD.

School Year	School	Therapy & Starting Date	
1976-1977	Neuwoehner	Litzsinger	March 10, 1977
1977-1978	Neuwoehner	"	Sept. 19, 1977
1978-1979	Central-Ladue	"	Feb.6,1979
1979-1980	Wright-Ladue	"	Oct. 16, 1979
1980-1981	Craig-Parkway	"	Sept. 18, 1980

In submitting this statement, it is our hope that other children will not have to suffer the three hour bus rides each day, four school placements in five years' time, and lach of consistant and continual support services after appropriate placement has been secured and an IEP written. Hopefully, other parents will not be faced year after year with with the prospect of making 3-4 phone calls daily to teachers, doctors, supervisors, superintendents, congressmen, lawyers, school board members, therapists, etc...before services are provided. SSD has brought Jennifer a very long way from a hospital's mis-diagnosis of trainable mentally retarded to placement in a regular third grade. But it has been a long and painful process which could have been avoided if everyone had been doing his/her job in consistent fashion.

Following is a detailed report of situations which could be rectified in SSD.

1976-1977
Neuwoehner School
Therapy-Litzsinger School-March 10,1977

Our initial contact with the St. Louis Special School District (SSD) occurred in June 1976 with a clinic evaluation of our daughter Jennifer Sappington. It was decided that her primary handicapping condition was a moderate to severe neural hearing loss, with a secondary condition of spastic cerebral palsy, necessitating her walking with quad canes.

At that time two programs for the hearing impaired were available in SSD-total communication at Litzsinger School, and oral communication at Neuwoehner School. The orthopedically-handicapped program with OT and PT services was also located at Litzsinger. But because of Jennifer's type of hearing loss and good ability for speech, it was decided at the June clinic staffing that she would be most appropiately placed in the oral proggam at Neuwoehner. We didn't want her to use sign language because of her speech potential and because of needing her hands free to operate the quad canes, so the signing used in the TC program at Litzsinger was inappropiate.

The orthopedic surgeon Jenny had been seeing had been a consultant to SSD and suggested that Jenny go until December 1976 without OT-PT services so she could be in the oral program at Neuwoehner. We didn't know enough to question why Jenny couldn't receive the OT-PT services even though they were offered within the district at a school only 15 minutes away. In December after seeing the surgeon she suggested that we place Jennifer at Litzsinger so she could receive OT-PT services to help the cerebral palsy. I objected, saying that Jenny was doing very well in the oral program and I thought it was late in the academic year to be changing schools. Also I reminded her that the only communication available to Jenny at Litzsinger included the use of sign language. She told me that SSD couldn't be providing different services at different schools for a multi-handicapped child. She then conveyed this same message to the OT-PT sppervisor. I have a copy of the letter that the doctor sent the supervisor.

We continued to question why Jenny couldn't beay in the oral program and be bussed to Litzsinger for OT-PT services, or have the therapists come to her. We got nowhere. Finally after a phone call to a SSD school board member explaining our plight, services were provided the following week. So in March of 1977 after 6 months of no therapy, Jenny was bussed to Litzsinger three days a week for OT-PT. Services were terminated the first week in June because of the end of the school year and we had to seek private speech and OT-PT therapy. We wondered why a summer program wasn't available when other school districts offered courses to their students.

1977-1978
Neuwoehner School
Therapy-Litzsinger School- September 19,1977

Again as in the previous year Jenny returned to the oral program at Neuwoehner. This time therapy started the third week of school with her again being bussed to Litzsinger. At the end of the school year her speech had improved remarkably. She now ambulated on two fore-arm crutches, and at her IEP in May it was suggested that she might benefit from partial integration into a regular school. Over the summer plans were made to move the two hearing impaired classrooms from Neuwoehner to rented rooms in another school district, thus opening the door for partial or total mainstreaming for some of the children. We didn't find out until just before school started that she would be at Central School in Ladue District.

1978-1979
Central School-Ladue District
Therapy-Litzsinger School-February 6, 1979

It worked out that Jenny would integrate into the first grade at Central School and get support services for her hearing and speech losses from the teacher of the hearing impaired in the SSD rented classroom. Things were going beautifully except no PT-OT services were provided. Again as in the past we fought for services to be provided. We had been led to believe that the goal all along had been to integrate Jenny into a regular situation with support services provided to help her maintain her skills. She was doing so well in the first grade and the children accepted her with no difficulty. It was incomprehensible to us that she wasn't receiving therapy, especially in light of the fact that surgery was being considered for the following summer and she would need to be in top physical condition. We were told by SSD that it was just too difficult to secure services due to lack of staff, scheduling problems, transportation problems, loss of the prescription from the surgeon by SSD, and heaven knows whatever other excuses they could think of. We continued to call supervisors, doctors, lawyers, anyone who we thought could help us. Finally after a call to Missouri Speaker of the House, Kenneth Rothman, Jenny began services. It took six months for this to transpire.

At the end of the school year, Ladue decided to close Central School. In May at the IEP meeting I reminded the SSD staff that Jenny should again need PT-OT in the fall especially after having surgery on both knees and groin in the summer to help straighten her legs. It was decided that Jenny would go with the hearing impaired classes again and integrate into the second grade of the new school for whatever subjects she could handle. Therapy would be provided in the past so as to allow her to be in the second grade at a regular school.

1979-1980
Wright School-Ladue District
Therapy-Litzsinger School- October 16, 1979

As Ladue had closed Central, the hearing impaired classes moved to another Ladue school,Wright School. So beginning her fourth year with SSD Jenny was now in her third school, being integrated into the second grade there. Wright School was only 5-7 minutes from Litzsinger and so it puzzled us why it took six weeks from the time school started to schedule therapy. Especially after I had made repeated phone calls to SSD during the summer reminding them of Jenny's surgery and the need for starting therapy early. When I called theOT-PT supervisor I was told that Jennifer was a unique case, and that when all the other children were serviced, she would be scheduled. I reminded her that even though she thought of Jennifer being unique, we had been led to believe she was capable of mainstreaming with sppport servicing. She then told me that there were problems having enough staff and I told her that was not my problem. Finally I ended up calling the deputy superintendent of the district to intervene. Due to his help Jenny started therapy on October 16, 1980, six weeks after school had commenced.

Jennifer made such good progress at Wright School that we made plans in May to place her at her home district school the following fall. She would be in a regular third grade and receive help from SSD hearing clicician and speech therapist and also, PT-OT services. At the Citizen Advisory Council's May meeting I questioned the superintendent of SSD as to what method to pursue to get services on time in the fall. He also cited the problem of short staffing and I suggested that perhaps they do more advertising. At any rate he said to call him or the deputy superintendent and it would all be taken care of.

1980-1981
Craig School-Parkway District
Therapy- Litzsinger School-September 18, 1980

As of this fall Jennifer is now in her home district in a regular third grade and receiving all support services as of the third week of school. The only unfortunate thing is that this is the fourth school in five years and one wonders how she would be doing had things been more consistent.

Thank you,
Susan Suppington
Susan Suppington-Mother
11635 Momarte Ln.
ST. Louis, Mo. 63141

AMERICAN ASSOCIATION
OF SCHOOL ADMINISTRATORS
AASA
LEADERSHIP
FOR LEARNING

Office of Governmental Relations
AASA's Voice in Washington

December 8, 1980

Ms. Pat Morrissey
Subcommittee on Select Education
CHOB-Room 320
Washington, D.C. 20515

Dear Pat:

Per phone conversation, please insert the following paragraph in AASA's testimony in connection with the oversight hearings on PL 94-142. It should be inserted on page 2 as the third paragraph under "Technical Assistance."

INSERT

- We urge more public input — ten meetings, not four, held at the ten Regional Resource Centers. These meetings would promote more understanding of the programs, provide information about the types of assistance available, and give more credence to the Resource Centers.

Thank you for your time in this matter.

Sincerely,

Charlotte

Charlotte Friedman
Legislative Specialist

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An Equal Opportunity Employer

STATEMENT SUBMITTED BY JOSEPH SCHERER, DIRECTOR, OFFICE OF GOVERNMENT RELATIONS, AMERICAN ASSOCIATION OF SCHOOL ADMINISTRATORS

The American Association of School Administrators (AASA), representing nearly 20,000 school administrators across the nation has and continues to be an advocate equal opportunities for education for the handicapped. We strongly support the efforts of the Department of Education to improve its efficiency and effectiveness by coordinating activities of the Office of Special Education (OSE) and the Office for Civil Rights (OCR).

Concerning the proposals by the Task Force on Equal Educational Opportunity for Handicapped Children, the Association welcomes the opportunity to comment on the four key areas considered by the report, and proposed cooperation between OSE and OCR.

1) Data Collection

- We enthusiastically support the objectives of coordinating and sharing of data on federal and regional levels. Coordination of data required by OSE and OCR would be very helpful to states and recipients. We also welcome strategies to improve the flow of information, especially other pertinent data available throughout the government. Such strategies should avoid duplication and therefore increase the ability of recipients to respond more effectively. We are concerned, however, that there may be an increase in the amount and types of data requested. We strongly urge avoiding such expanded requirements which would not only increase local/state costs but create problems in the adequate collection of data from many small local recipients.
- We urge that development of data collection instruments focus on a common form for reporting by the recipients. A single form would centralize and systematize efforts and would be especially useful if required only on a yearly basis. Data requested at random times, which has not normally been required, places undue hardship on the recipients. If a common instrument for

data collection could be devised for collection and reporting, any further expenses for collection of other information should be borne by the federal government.

- We urge that comparisons not be made between states and local recipients in the data collected and published.
- A systematic procedure for assessment and data reviews are excellent ideas. Systematic, adequate analysis of data should better target areas with significant problems. Better technical assistance in targeted areas depends on effective efforts to coordinate and cooperate data collection and use.

The key to good compliance and an effective program is a good data base. We urge OSE-OCR to share policy issues and data requirements so that these needs may be addressed. We are pleased with this positive approach to promoting effective, efficient cooperation between the two offices.

2) Policy Development

- We urge that requests for information and exchange of comments concerning policy be made before "Notices of Intent" are published to allow for effective public input. It is unclear from the Task Force Report exactly how much time and by what means public input will be handled following these announcements. In the past, public involvement in the consideration of complex issues has been limited due to time constraints. We hope sufficient time will be allowed so that input from all concerned may be considered.
- We urge that the regulations and interpretive rules be precise enough to give consistent direction to recipients and Department of Education staff. Further we urge that they be sufficiently flexible to make allowances for differing circumstances of the many recipients. Clear, consistent, coordinated policies will give clear, consistent results in monitoring and in technical assistance targeting.

- We welcome guidelines concerning recipient and parental concerns being addressed by the joint offices. Especially useful should be such items as an easy-to-use format for understanding the IEP process.

Clarification of issues or problem areas as well as concrete methods to simplify and enhance efficiency are important ways to ensure effective compliance. It is only through the development of sound, well thought out policy that recipients will be able to meet the goal of equal educational opportunity for the handicapped.

3) Technical Assistance

- We urge that the limited funds available be used effectively so as to avoid duplication, overlap and gaps, and to reach the areas of greatest need.
- We encourage the development of a positive attitude by federal and regional technical assistants toward problem solving. Knowledge that there will be priority needs listed and systematic coordination of resources will increase confidence of the recipients in ability of the OSE Regional Centers and the OCR to respond quickly and positively. Staff providing technical aid should provide only the assistance requested.

INSERT →

- We urge that the public be involved, especially at the regional level, in the joint planning meetings and have input in the annual assessment.

Policy support often depends on an informed and participating public -- sharing policy development input is an effective method to assure this support.

4) Enforcement and Monitoring

- We urge that the proposed joint visit process be expanded to include those states or recipients who appear to have the most severe problems of compliance. We believe random sampling and periodic visits to be less effective than targeting visits to those most in need. However, we urge that the visiting teams attempt to balance membership between OSE and OCR since expertise and responsibilities are somewhat different.

- We strongly support the joint training of enforcement personnel. Better trained personnel means more consistent investigations and reports which, in turn, eliminate the uncertainty expressed by many recipients. In addition, we support joint regional training to develop ways of eliminating overlap in the assistance and monitoring functions of OSE and OCR. We urge that such joint training emphasize the positive attitudes of enforcement -- assistance to overcome non-compliance problems. We recognize that such joint training will be difficult to coordinate but urge that consistency be the primary goal. In the past, training for OCR personnel has not always produced consistent monitoring or enforcement, leading to uncertainty and fear of these monitoring investigations. AASA hopes that the training program outlined in Appendix C of the Task Force Report will include all personnel at the regional level, not just enforcement, but technical.
- We urge that there be no overlap of assistance and monitoring functions. It is suggested that the training program emphasize referral for assistance first and enforcement last, when all other remedies have failed. There has been criticism that recipients may feel that a request for assistance will trigger enforcement investigations. Therefore, often needed assistance may not be requested because of this fear.
- We urge that all pertinent information be shared with states and recipients in the future. The Task Force Report lists 14 key issues and 69 subissues with their data needs. This kind of information would be useful to states and recipients.
- We urge that OSE and OCR notify SEAs as quickly as possible concerning any non-compliance problems. We concur in the suggested sharing of State Plans and coordinating information between the two offices but we hope they will

work toward cooperative and speedy notification and resolution of problems. Seventy-five days of "dead silence" would not be in the best interests of the states, recipients or the handicapped children we wish to help.

In conclusion, AASA supports this proposal to coordinate the work of the Office of Special Education and the Office for Civil Rights. This coordination appears to be in the interests of promoting the goal of equal educational opportunity for the handicapped by increasing efficiency and decreasing duplication and overlapping of efforts by the two offices.

We are, however, concerned with emphasis on the negative enforcement/complaint aspects of this coordination rather than on the positive compliance/assistance aspects. We concur that monitoring is a necessary function but believe voluntary compliance aided by realistic, helpful assistance and consideration for various local situations is a more effective approach.

AASA supports clarification of policy in order to promote consistent application of regulations. AASA hopes that the regulations, interpretive rules and policy statements to be promulgated will be precise but flexible enough to allow for the many individual differences among states and recipients.

Our major concern with the OSE-OCR coordination is that there will be an increase, not decrease, in data required and that collection of this data will continue throughout the year. We strongly recommend a common data reporting form to be used annually. This will enable recipients to collect the required data in the most cost-effective manner.

With better leadership, guidance and assistance from the Department of Education, state and local authorities will be better able to meet their commitments to equal educational opportunities for handicapped children.

NATIONAL COMMITTEE FOR CITIZENS IN EDUCATION
THE Parents' Network
Committed to Improving the Education of America's Children by Increasing Parent/Citizen Participation in the Public Schools

Senior Associates
[illegible]

December 22, 1980

DEC 29 1980

Hon. Paul Simon
Chairman, Subcommittee on
Select Education
320 Cannon Building
Washington, DC 20515

Dear Mr. Simon:

Thank you for your invitation to testify before the Subcommittee on Select Education during its final oversight hearings on PL 94-142. As I indicated in earlier correspondence, NCCE preferred to submit its testimony in writing at a date later than your hearing. If it is acceptable to you and the Subcommittee, I would like this letter and the enclosed report to be considered as our testimony.

NCCE has just completed a two-year study of the implementation of the parent involvement provisions in PL 94-142. In October 1979, I testified before the Subcommittee on the results of the first part of the study, a survey of nearly 2500 parents whose children are receiving services under the Act. Since that time, we completed the second part, a review of the federal and state enforcement and monitoring of parent involvement. Although our study was done parallel to that of the Education Advocates Coalition, it was much more focussed on specific provisions in the law.

We found that serious compliance problems in every area reviewed -- the development of Individual Education Plans (IEP's) for each child with the participation of parents or guardian, procedural safeguards for parents to challenge inappropriate educational decisions and to receive written, prior notice of any change in the child's placement or status, and procedures to protect the confidentiality of the child's school records -- existed in virtually every state. A detailed explanation of our approach and charts showing the status of the areas reviewed for each state are contained in the report.

Suite 410, Wilde Lake Village Green • Columbia, Maryland 21044 • (301) 997-9300

In your letter of November 5, you requested that we address our testimony to the Education Secretary's "Task Force Report on Equal Educational Opportunity for Handicapped Children," and specifically to its three major components, federal policy development, monitoring and enforcement, and technical assistance, as well as the capacity of OSE and OCR to implement the plan. Because of the limited scope of our study, I feel that NCCE can comment knowledgeably only on the monitoring and enforcement section, and to a lesser degree, on the capacity of OSE to implement the plan.

All the recommendations made in our report are, to some extent, addressed by the Task Force Report. Basically, we found that OSE lacked even the minimum number of staff and travel funds to meet its technical assistance and enforcement responsibilities. The success of the steps taken by OSE and OCR as a result of the Task Force will largely depend on the commitment of resources OCR will be able to make, in effect to compensate for the lack at OSE. The framework devised -- an annual compliance review plan, OCR participation in program administrative reviews, a more systematic complaint handling process, and a greater emphasis on enforcement -- seems excellent, but it will not produce results unless enough staff and travel funds are available.

The reorganization of OSE, which provides for separate staff to conduct monitoring and technical assistance, and its increased staff allowance, is encouraging, although minimal.

In short, NCCE feels that the Task Force Report appears to be a fine beginning, that OSE and OCR appear to be fully committed to addressing the problems we and the Advocates Coalition identified, but that the change in Administration could mean that the necessary resources may not become vailable. We intend to continue to monitor the enforcement of PL 94-142 closely over the next several months and will advise you of our findings.

Thank you.

Sincerely,

Stanley Salett

Stanley Salett

SS/bn
Enclosure

A Report on
The Education for All Handicapped Children Act:
Are Parents Involved?

by Stanley Salett and Anne Henderson

National Committee for Citizens in Education
410 Wilde Lake Village Green
Columbia, Maryland 21044

October 1980

I. Introduction

As a non-partisan, public interest organization dedicated to increasing parent and citizen involvement in the issues and policies of the public schools, NCCE has had a continuing interest in the Education for All Handicapped Children Act (PL 94-142).. This landmark legislation, passed by Congress in 1975, requires the states to provide a free, appropriate public education to all handicapped children, in an environment that is least restrictive as possible.

A major feature of the Act is the requirement for an Individualized Education Plan (IEP) to be developed for each child by teachers, specialists, other school personnel, together with the child's parents, which sets out the goals, objectives, and services for the child. There are also a series of procedural safeguards to protect parents and children, including the right to an independent evaluation of the child (under appropriate circumstances), prior written notice and parent consent for evaluation and all placement changes, and the right to an impartial hearing and appeals if no agreement can be reached between school and parents as to what is best for the child.

With our network of over 325 parent/citizen groups active in local public education, many of them in special education, we share the belief that decisions affecting the lives of children should be open to public scrutiny. In addition, we have found a growing body of research demonstrating that parent involvement in school activities has a positive effect not just on school policies, but on student achievement as well. Over a decade ago, for example, James Coleman made his now-famous report to the Department of Health, Education and Welfare, which showed, among other things, that student achievement is higher in schools with active parent organizations.[1] And a 1973 HEW study found that two key factors in academic success were students' and parents' expectations, and the extent to which parents engaged in activities supportive of these expectations.[2]

In addition, the recent report by the Carnegie Council on Children, The Unexpected Minority: Handicapped Children in America[3] argues strongly that parent involvement is critical as a corrective to the devastating vulnerability of the handicapped child. In his foreword, Kenneth Kenniston writes, "The greatest harm to the handicapped child stems from the socially engendered impairment of daily life, self-concept, and future--not from functional impairments themselves," (emphasis added).

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1. James S. Coleman, et al., Equality of Educational Opportunity U.S. Dept. of Health, Education & Welfare, Washington, DC, U.S. Government Printing Office 1966. See also Christopher Jencks, "The Coleman Report and Conventional Wisdom," in Mosteller & Moynihan (eds.) On Equality of Educational Opportunity, (NY, Vintage) 1972.

2. Mayeske, George W., "A Study of the Attitude Toward Life of our Nation's Students," (Washington, DC, U.S. Department of Health, Education & Welfare) 1973.

3. John Glidzman and William Roth, The Unexpected Minority: Handicapped Children in America, (Harcourt-Brace, NY) 1980.

A child with a disability is often treated as though there is something medically wrong, from which he or she is supposed, somehow, to recover. The child becomes a life-long patient, whose entire family must submit to domination by professionals, and who consequently is excluded from normal expectations. The child's incapacity becomes an excuse for asserting professional expertise, and, as the authors assert, "a more striking abuse of our culture's concept of the expert cannot be imagined. In every handicap specialty," the report continues, "it is essential that parent and professional actively work together on the child's behalf."[4]

Our own experience with parent/citizen groups also leads us to conclude that it is indeed wise policy for the federal government to encourage parent participation in public schools. NCCE has strongly supported the provisions in PL 94-142 requiring parent involvement in the development of individual education plans (IEP's) for their handicapped children, and protecting that right through procedural safeguards and confidentiality requirements.

II. NCCE Study

Although passed in 1975, PL 94-142 gave states and school districts almost 3 years to make plans and develop programs to serve all handicapped children, ages 3-18, including those for whom no services had previously existed. Once the law became fully effective, in September 1978, NCCE decided to conduct a survey of parents, to determine from their perspective how well the law was working, and to monitor the implementation of the parent participation provisions. Funding was obtained from the George Gund, Hearst, Field, and New World foundations. No federal funds were involved.

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[4] Ibid., p. 145.

With a research team at Ohio State University, we designed and field tested a survey to answer such questions as

- Are affected parents aware of their rights under the law?
- Have schools notified parents that their presence is required at an IEP meeting?
- Has a meeting been held, and how were parents treated at it?
- Are educators helpful? Are they listening to parents?
- Is the program resulting from the IEP meeting based on what a child needs, or on what the school system has to offer?
- Do parents know they can appeal IEP's made for their child?

Once the survey form was tested and complete, we activated a network of contacts from parent and professional organizations and formed a coalition of more than 400 state and local volunteer groups. Through them we distributed 50,000 surveys to parents of handicapped children. We also received cooperation and publicity from Teacher and Instructor magazines, Education Daily, the American School Board Journal, the National Education Association and the National Association of Elementary School Principals, which reprinted our survey in full and sent it to their entire Communicator readership list. Although several local PTA's participated in the study, the national PTA would not collaborate.

Nearly 2,500 parents of children with various handicaps, from 438 school districts in 46 states, took the time to complete and return our questionnaire. To our knowledge, it was the only national survey focussed upon parent participation in PL 94-142.

In the next phase of the study, we examined the Program Administrative Reviews (PAR's) conducted by the Bureau of Education for the Handicapped, now the Office of Special Education (OSE), in each state. We identified IEP-related areas cited by OSE for corrective action, to determine the extent of state compliance with the law, and to assess the administrative burden and performance of OSE.

III. The Survey Results

Considering that PL 94-142 had, at the time of the survey, been in effect only one school year, the responding parents indicate that the IEP process seems to be working basically quite well, although there is room for significant improvement.

- Nearly 60% of the parents report that an IEP meeting was held within 30 days of their child's evaluation. Only 6% report that a meeting was never held.
- Over 70% said that the information about their children's evaluations was "fair and useful," that educators presented the IEP "in understandable language," and that there was an opportunity to ask questions.

- According to 83% of the parents, the meetings were well attended; 77% said teachers were present, and 66% said other "school representatives" attended. (Only 18% of the parents, however, reported that their children were present.)
- 70% of the parents reported that the IEP's did contain important basic information: annual goals, short-term objectives, specific services to be provided, present performance levels, and the dates that services were to begin.
- 65% of the parents felt adequately informed about the IEP and 70% felt that the IEP "seemed to fit" their children's needs. Only 5% refused to approve the IEP.

(See Attachment A for the survey form and tabulations).

These figures certainly indicate that the idea of an individual education plan for every handicapped child, drawn up in consultation with the child's parents, has had success.[5] Such a massive undertaking has required an enormous amount of time, energy, and commitment from everyone involved--teachers, administrators, and parents--and it is a tribute to all of them that it has worked as well as it has.

On the other hand (there is always another hand--President Truman once said that what he needed was a one-handed advisor), there are some substantial problems.

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[5] A few caveats should perhaps be noted. Because the survey was not done by random-sample, there will be a bias, in that parents most likely to seek active participation in the IEP process would also be the most likely to respond to a questionnaire. A breakdown of respondents by geographical area, size of school district, and sex, age, and handicap of children, however, does correspond roughly to the population as a whole. Copies of the data analysis are available upon request.

- Parents are not participating as full partners in the development of the IEP's:
  - -- a majority (52%) of the parents reported that the IEP's were completed before the meeting.
  - -- nearly 30% reported that the IEP's do not contain ways for parents to check their children's progress.
  - -- 30% reported that the IEP did not indicate how much time the child would spend in a regular classroom setting.
  - -- 40% reported that no specific date was set for reviewing a child's progress, and one-third reported that no mention was made of how, when, or by whom a child's progress would be checked.
- Parents are not being prepared to participate in the IEP process. In fact, over half the school districts covered in the survey do not have a program to prepare parents.
- Information on how to appeal a contested evaluation or IEP was not made available to nearly 46% of the parents surveyed.
- And while the most basic requirements of the IEP have been met, still a full 45% of the parents reporting felt that the annual goals set in the IEP did not fully meet the educational needs of their children.

A further analysis of the data shows that the parents of mildly handicapped children are generally more satisfied with IEP procedures than are the parents of severely handicapped children. Also, smaller school districts (those serving fewer than 5,000 children), as well as parochial schools and state-operated programs, are having greater difficulty in meeting IEP requirements.

IV. Monitoring of State Performance

The major administrative responsibility for PL 94-142 lies with the State Education Agencies (SEA's), which are required to assure that a free, appropriate public education is available to all handicapped children between the ages of 3 and 18 (§612(2)(B)), and that the Local Education Agencies (LEA's) have carried out all the requirements of the law (§612(6)). To ensure that the states have, in fact, met this responsibility, the Office of Special Education (OSE) schedules Program Administrative Reviews (PAR's) in each state approximately every other year.

For this portion of the study, our staff, together with Policy Analysis from the Youth Policy Institute at the Robert F. Kennedy Memorial, read all the PAR reports and charted the corrective actions dealing directly with parent or public involvement.

There are a few important points about methodolo and approach that should be made before the findings are presented. Although OSE is supposed to visit each state every two years, severe shortages of funds and personnel have forced delays and cancellations. Consequently, most states have had only 1 PAR since the law became effective three years ago.

- Arizona, Kentucky, and Massachusetts have not been reviewed since 1977.
- Colorado, Delaware, North Carolina, South Dakota, Utah, and Washington had not, as of this spring, been reviewed since the first half of 1978.

- Reviews scheduled for 11 states this year were cancelled: North Carolina, South Carolina, Kentucky, Delaware, Massachusetts, Arizona, Idaho, Indiana, South Dakota, Utah, and Washington.

The first PAR in a state is intended to determine whether the state education agency can actually make reliable assurances that the law is being fully implemented; that is, whether its administrative apparatus is in working order, its state laws are in accord with federal law, its policies are properly written, and its directives have been adequately disseminated. It is largely concerned with policies, procedures, and systems, rather than actual operating conditions. Although several local school districts are visited as a double check, they are not identifed in the report.

The second PAR is conducted primarily through "site visits" to local districts, regional centers for the handicapped, if they exist, and state institutions. All the areas checked in the first report are again checked, to determine the extent of local (or agency) compliance and the effectiveness of the state monitoring system. In the second report, the districts are identified and the corrective actions cited for each one.

Even though a single format was used for each PAR series, allowing standardized comparisons and monitoring of corrective actions, the quality and depth of the reviews varied enormously. No matter what the size, complexity, or reputation of the state, the visits lasted only 3 days, and only in rare cases did the teams have more than 5 or 6 members. (Some of the most recent PAR's have entailed short advance visits and larger teams, a needed improvement). Also, the cancellation of many second PAR's makes comparison difficult. In some instances, PAR's conducted before or just after the law was effective (10/1/77) had to be compared with others completed 3 years later.

These data should be taken, therefore, more as a measure of the technical assistance, monitoring, and enforcement load of OSE than as a record of its effectiveness. And similarly, the charts represent more the magnitude of problems with state compliance than an accurate picture of their performance. In many states, corrective actions have been taken, and full compliance, at least as far as there is an SEA monitoring system capable of assuring implementation, has been negotiated to OSE satisfaction. It is possible that many of the corrective actions charted have been made by now; and yet it is also possible that many LEA's are still not in full compliance despite state assurances.

In the areas studied, which were IEP procedures, content, and participation; procedural safeguards; and confidentiality of records, we found serious compliance problems in at least one area in every state reviewed (New Mexico has declined to participate in PL 94-142).

- 47 states and the District of Columbia had corrective actions cited for IEP procedures. (Massachusetts was not cited because the PAR took place before the law went into effect; Pennsylvania also was not cited).
- 48 states and the District of Columbia had to take corrective actions to guarantee procedural safeguards (Massachusetts again was excepted).

- 48 states and the District of Columbia had corrective actions cited for procedures to protect the confidentiality of school records (Vermont, the lone exception, was praised for its adherence to the confidentiality requirements).

For a more complete picture, see Chart I.

The major problems identified in IEP procedures were

1. Assuring IEP's for all children in state agencies or private schools (20 states were cited for violation).
2. Having the IEP in effect prior to providing services (18 states cited).
3. Rounding up the proper participants for the IEP meetings (36 states, 25 cited for inadequate efforts to include parents).
4. Arranging timely notification and convenient meeting times for parents, and keeping records of attempts to reach parents (30 states cited).
5. Ensuring that basic IEP contents are complete (34 states cited).

The problems with procedural safeguards lie primarily in:

1. Informing parents of their right, under prescribed circumstances, to an independent evaluation, at no cost, to an impartial due process hearing, and to an appeal (43 states cited).
2. Giving prior written notice to parents about their child's placement and obtaining their consent (40 states cited).
3. Adhering to proper hearing timelines (17 states cited).
4. Providing surrogate parents when needed (35 states cited).

Nearly every state (except Massachusetts) had to take corrective action in at least one of these areas. Again, for a more complete picture, see Charts I and II.

The third provision for parents' and children's rights, confidentiality of school records, was also not well enforced.

School districts have been required since 1974 by the Buckley Amendment (Family Educational Rights and Privacy Act) to implement a school records policy protecting the confidentiality of a child's records and guaranteeing access to parents.* The only additional safeguard for handicapped children provided by PL 94-142 is that parents may request that, once their educational value has ended, any personally identifiable information in their child's records may be destroyed.

1. Most school districts lacked proper procedures to shield the records from unauthorized access, and most failed also to keep a record of who had obtained access (34 states cited).
2. In at least 30 states, parents were not informed of their right to have records destroyed.
3. Lists of types and locations of records are not maintained in many states (22 were specifically cited) (see Chart II).

According to OSE staff, there is no real evidence that parents are being deliberately denied the right to see their children's records, but the PAR's clearly show a pervasive pattern of sloppiness at the district level and inadequate direction from the states. The review teams from OSE seemed also to assign confidentiality a low priority, for the reviews of records procedures were seldom thorough or precise. In two states where corrective actions were cited during the first PAR, confidentiality was not mentioned in the second, otherwise more thorough, report (DC and Virginia).

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*A 1977 NCCE study of local school district compliance with FERPA found additional significant shortcomings. In a sample of 169 school districts in 29 states--only 45% informed parents that they have the right to appeal to federal authorities--only 44% routinely provided parents with copies of the law, and--only 34% informed parents that school records may include material on microfilm or computerized data.

V. Conclusions

To those familiar with other reports on PL 94-142, and with the voluminous testimony that the Congressional subcommittees heard over the past year during their oversight hearings, their findings will not come as a surprise. The Education Advocates' Coalition Report last spring, for example, found that many handicapped children had not received IEP's or that the IEP's were "canned," (i.e., prepared before the IEP meeting, using standardized language), that most states have no system for appointing surrogate parents, and that inadequate notice of rights under the law and unnecessary procedural hurdles are often used to discourage parents from full participation.[6] These problems were evident both in this survey and in the PAR's.

Many excellent recommendations were made in the Advocates' report, in other reports, and in the testimony presented. They will not be recapitulated or repeated here, but we do have some observations and further recommendations that others may find useful.

In both legislation and regulation, the law offers too little guidance on parent participation. Other major federal education programs devised to serve a specific category of children in need--Title I, ESEA, the Bilingual Education Act, the Emergency School Aid Act, for example--recognized the importance of an independent committee or council, composed of a majority of parents, to provide help to other parents and to hold local officials accountable for the use of federal funds. Despite the commendable avenues for individual parent involvement required in 94-142, there is no mention of local parent councils. It is our experience that when state and local education agencies seek outside opinion, if they seek it at all, they work only with a select set of people and often in a very closed way.

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[6] "Report by the Education Advocates' Coalition on Federal Compliance Activities to Implement the Education for All Handicapped Children Act," (Children's Defense Fund, Washington, DC) April 16, 1980.

Yet the Carnegie Council report concludes that "perhaps more than anything else, it is essential that parents of handicapped children organize themselves into self-help groups,"[7] (emphasis added). These can provide parents with alternative sources of information and moral support, as well as the greater leverage against professionals and the school system so necessary to counteract their children's vulnerability.

Accordingly, we recommend that:

- Guidelines be written, or the regulations amended if necessary, to permit use of local administrative funds (up to 5% of an LEA allocation) to support a parent advisory group offering services such as--
    1. Providing basic information on PL 94-142 to all parents of handicapped children in the local school district, including information on how to appeal an evaluation, an IEP, or a placement.
    2. Reviewing the local school system's plan for implementing PL 94-142 and holding public meetings on the plan.

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[7] Glidzman & Roth, op. cit., p. 170

3. Developing a roster of interested citizens and agencies, including parent/citizen organizations, which can offer services and should be informed of the group's activities.

4. Encouraging and assisting school personnel to conduct a parent training program about the law, the IEP process, and to answer questions parents may have.

5. Assisting school personnel in a training program for teachers on how to work with parents on the IEP.

- OSE policy papers on IEP's should strongly recommend that all IEP's contain specific items for parent involvement:

1. How to check the child's progress.

2. At-home activities that can reinforce the education program.

3. Check-point intervals for parents to confer with teachers and to revise and update the IEP. (Over 40% of the parents we surveyed stated that no date or method for reviewing progress was specified.)

- OSE should also specifically require, in its policy papers and through its monitoring system, that an IEP may not be completed before the parent meeting, that a completed copy be made available to parents a reasonable time after the meeting, and that all parents be informed at the meeting of their right to an appeal.

In light of the Carnegie Council report and the experience, not only of advocacy groups but of professionals in special education, who strongly endorsed the parent involvement provisions in the original legislation, the strongest possible parent participation is necessary for full success of this program. These recommendations are within the intent of the law and could be implemented easily and with minimal cost.

The remainder of the conclusions deal with the second part of the study, the federal and state administration of PL 94-142, specifically the parent involvement provisions. Given the magnitude of this law--the tremendous change in state and local policy and practice it requires--and its status as a virtual civil rights act, it is clear that the Office of Special Education is painfully under-staffed and under-budgeted.

The funds that OSE receives to administer PL 94-142 do not come out of program appropriations, but are instead a portion of the separate lump appropriation the Department of Education receives for salaries and expenses. This is true for all federal education programs, whether they are run directly from Washington or through the State Education Agencies, with monitoring from Washington. Although the large formula grant programs, such as Title I, ESEA, Vocational Education, and PL 94-142, which are largely run by the SEA's, provide administrative set-asides proportional to their dollar size, usually 5% of the total grant at both SEA and LEA levels, there is no such system at the federal level. If we compare the ratio of administrative funds to program appropriations among these programs, which are structurally similar, there are surprising discrepancies:

Program	Ratio of Administrative to Program Funds (FY 80)
Vocational Rehabilitation	$10.93 per $1000
Vocational and Adult Ed.	6.54 per $1000
OSE (94-142)	5.72 per $1000
Total Department	$16.49 per $1000

If the funds to oversee the state programs, the part of the law with which this report is concerned, are separated from those to administer innovation and development, media services, and the gifted and talented programs, the ratio is much lower--$1.98 per $1000.[8]

The Division of Assistance to States, which is responsible for policy development, technical assistance, and enforcement, not only lacks adequate staff and funding, it has also been poorly organized. A 1977 plan to establish three branches, one for each function, was never approved. Consequently, since January 1978, enforcement and technical assistance have both been lodged in the Field Services Branch. The job to review all state plans, conduct all PAR's (each state plus Puerto Rico, the Virgin Islands, and the Trust Territories, every two years), and monitor all corrective actions, has fallen to a staff of sixteen professional staff and three Section Chiefs.

It is generally agreed among advocacy groups and agency staff that a review schedule of every two years is minimal, especially considering the enormous problems of compliance documented here, and that the staffing level to do even that is low.[9] But compounding the problem is the fact that there

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[8] These figures were supplied by the Dept. of Education budget office:

	S&E Funds	Program Funds (FY 80)
Vocational Rehabilitation	$9,854,900	$901,120,000
Vocational & Adult Ed.	6,077,700	928,396,000
OSE	6,044,200	1,055,305,000
DAS/OSE	1,875,000	942,900,000
Total Department	238,638,000	14,470,266,000

[9] Education Advocates' Coalition, op. cit., pp. 11, 15, 20.

have been several vacancies in the Field Services Branch over the past few months that cannot be filled because of the general freeze on hiring throughout the entire government. This has meant that eleven PAR's had to be cancelled this year, three in states that have not been reviewed since 1977.

There is also a larger question of the wisdom of assigning both assistance and enforcement functions to a single official, aside, of course, from the basic problem of overload. In practice, it seems to result in protracted negotiations, not just over the PAR findings (while the average lapse between site visit and final report is 3½ months, for some states it is as long as 6 months, and for two states a full year), but over the timelines for corrective actions, too. In the eleven states where two PAR's had been completed at the time of our study, nearly every one had the same problems cited the second time as had required corrective action in the first report.[10] (See Chart III).

On September 29, as the final version of this report was being written, OSE announced that a reorganization plan has finally been approved. Compliance and technical assistance will be separate functions, each with its own branch chief and staff. Policy development, the third branch, will remain separate. Dr. Ed Sontag, the Acting Director of the Division of Assistance to States, has assured us that compliance will be its top priority, that thirty-one states will be visited this year, and that all cancelled PAR's have been rescheduled.

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[10] The process of monitoring corrective actions at OSE is not monitored clearly enough to study more systematically how long it takes the states to meet their timelines.

A decision has also been made to increase Division staff by ten professionals. The technical assistance branch (Field Services) will have a Chief and 23 professionals (an increase of four), and the new compliance branch will have a Chief and 11 professional staff.

Because we held a long series of meetings with the Division staff while the reorganization plan was being designed, much of the information contained in this report has had a formative effect. While we are delighted that the reorganization has been approved, we do feel that the staffing level is still inadequate. If the former staff of nineteen professionals could not meet its compliance load, as this report clearly shows, the new compliance staff of eleven professionals, even relieved of technical assistance responsibilities, is going to be hard-pressed.

It hardly seems fair to criticize OSE further, when it has only just been given the means for self-improvement. The staff we have worked with in preparing this report has been very competent, cooperative, and self-critical. It is, in fact, the most highly impressive and professional staff we have encountered in a government agency. If the bureaucracy is bloated and inefficient, as its critics allege, the evidence is not to be found at OSE; and we wonder what the effect of the mandated reduction of 500 personnel that was required for a separate Department of Education will be on its performance.

Nevertheless, a few recommendations should be made here. Now that OSE petitions for increased staff and reorganization have been heard, these measures will undoubtedly be favorably considered:

- The schedule for PAR's should be changed and made more flexible. States with serious compliance problems should be visited more frequently than those with better records. The length of the visit and the size of the team should also be adjusted according to circumstance. Other recommendations about better use of data, cooperation with the Office of Civil Rights, and contents of the PAR's have already been made by other groups, especially the Advocates' Coalition, and we fully support them.
- A visible, regularly updated, and comprehensive system of monitoring corrective actions is desperately needed. Information, correspondence, and documentary materials from each state now lie about in folders, and it is impossible easily to determine its status on meeting timelines or taking action.
- OSE needs, at minimum, to identify and disseminate "best practices" among the states. In some areas, such as IEP manuals for parents or teachers, or examples of proper written notice, OSE should develop its own models for recommended use. Many school districts are groping in the dark and a system of trial and error is not only harmful but unnecessary.

- OSE should be more sensitive to the needs of parents when it develops materials for state and local officials. The otherwise well-done recent policy paper on IEP's drafted by the Division of Assistance to States (May 23, 1980), for example, does not consider any of the items we considered above--assisting parent groups; revising IEP's to contain specific times for review, supportive at-home activities, or ways to check a child's progress; discouraging "canned" IEP's, informing parents of hearing rights at the IEP meeting, and providing copies of IEP's--all issues raised regularly by parent advocacy groups.
- OSE should also develop a compliance/monitoring agreement with the FERPA office, similar to that worked out with OCR.

NCCE plans to hold another series of meetings with OSE and Department staff about these recommendations, and to issue a follow-up report sometime next spring.

For further information please contact Stanley Salett.

Please Circle your answer

14 A specific date was set for reviewing my child's progress under this IEP — 49.9 Yes No 40.0

15 The method of checking my child's progress in the IEP included

how it would be checked — 45.6 Yes No 32.1

when it would be checked — 42.9 Yes No 34.5

who would be responsible for making sure it's done — 42.9 Yes No 31.5

16 Some regular class placements for my child were considered during the IEP meeting — 45.7 Yes No 33.7

17 Every attempt was made by educators to provide services for as much time as possible in a regular classroom — 49.3 Yes No 27.5

18 A completed copy of the IEP was

made available to me to look at — 66.4 Yes No 7.3

made available to me to keep — 53.3 Yes No 20.2

19 The IEP for my child was completed before the meeting with me — 51.9 Yes No 28.6

What Were Your Feelings About the Following:

20 Educators presented information during the IEP meeting in understandable language — 79.1 Yes No 7.1

21 I was given the opportunity to ask questions about points I didn't understand regarding the IEP — 82.9 Yes No 9.9

22 I was encouraged to contribute significant information to my child's IEP — 64.8 Yes No 16.2

23 The IEP that was developed seemed to fit my child's needs — 70.2 Yes No 14.0

24 Educators provided information that helped me understand the IEP process — 63.0 Yes No 22.7

25 I felt like a fully participating member with the educators during the planning of the IEP — 59.9 Yes No 21.0

Please Circle your answer

26 The school which my child attends has a program for preparing parents to participate in the IEP process — 26.2 Yes No 57.2

27 I refused to consent to the IEP — 5.2 Yes No 76.5

28 I was given specific information on how to appeal the program assignment decisions in the IEP — 34.0 Yes No 45.1

29 I was asked to assume costs connected to services in my child's IEP — 5.2 Yes No 71.9

30 I am hopeful that the IEP for my child will improve next year — 64.0 Yes No 11.0

Other comments:

Please feel free to give us any additional comments about your IEP experiences: ______

Insert the completed form in envelope provided
Your 15¢ stamp saves us 20¢

National Committee for
Citizens in Education (NCCE)
Suite 410, Wilde Lake Village Green
Columbia, Maryland 21044

Return as soon as possible,
but no later than July 1, 1979

A PARENT-CITIZEN SURVEY

Checking Your Child's Progress In Special Education Programs

ATTACHMENT A

lic Law 94-142 (The Education for All Handicapped Children Act of 1975) is a federal law which provides for free and appropriate public education for all handicapped children regardless of the degree or type of handicap. The law also requires that a written educational plan (IEP) be developed for each child to meet his/her unique educational needs.

This questionnaire is designed to find out about the views concerning one aspect of this law—the Individualized Educational Plan (IEP). We value the comments and help you are about to give. Keep in mind that the help could improve services for children throughout the country. As one example we plan to produce a handbook for parents on how to participate more actively in the IEP process.

ool Building ______________ ______________

ool System ______________

ent's Name ______________

Address ______________
Street City State Zip

ild's Age ___ Sex M ___ F ___

at is your child's primary handicapping condition?

____

your child in a public school? Yes ___ No ___

IO what type of school? i.e. parochial private state

____

ur phone number (would be held confidential) would helpful to us if we want to follow up.

____
ea Code Number

ase answer the following questions after you have attended meeting at which your child's IEP was developed for the ing school year.

Please Circle your answer

1 The IEP meeting was held within 30 days following evaluation of my child. If NO, please check when the IEP meeting was held following the evaluation: 69.1 Yes No 29.9

6.0	3.9	1.7
2 mos. later	3 mos. later	4 mos. later
0.9	5.5	6.0
5 mos. later	6 mos. later	never

2 The information from my child's evaluation before the IEP was fair and useful for planning a program for my child 91.3 Yes No 11.3

3 The following were present at the IEP meeting:

My child 17.9 Yes No 60.6

Child's teacher 77.9 Yes No 9.7

School representative (other than child's teacher) 66.9 Yes No 13.9

Parent or Guardian 83.3 Yes No 3.2

Other ______________

4 The IEP for my child contained the following items:

- annual goals 72.1 Yes No 5.9
- short-term objectives 73.3 Yes No 11.6
- specific service(s) to be provided 80.1 Yes No 11.3
- present level of performance 75.7 Yes No 8.5
- date services were to begin 67.3 Yes No 15.5
- ways to check my child's progress 63.0 Yes No 19.3
- special materials, equipment or media 52.4 Yes No 31.7
- percentage (%) of time in regular class placement 58.5 Yes No 23.3
- place for me to indicate my approval 77.1 Yes No 7.0
- educators informed me of how the IEP was to be developed and what would be in it 65.0 Yes No 17.4

Please Circle your answer

5 The description of my child's present educational performance in the IEP included information in all four of these areas:

- self-help skills (personal maintenance) 60.1 Yes No 18
- academic skills (reading, math, etc.) 71.5 Yes No 11
- social behavior (how s/he gets along with others, etc.) 67.1 Yes No 15
- physical skills (coordination, running, etc.) 58.2 Yes No 22

6 There were major areas of educational needs for my child which were ignored during the IEP meeting 14.5 Yes No 62

7 The short-term objectives are written as specific steps my child will achieve in the next three months or more 58.5 Yes No 21

8 The short-term objectives did seem closely related to the annual goal(s) 63.8 Yes No 11

9 The annual goal(s) in the IEP did not fully meet the educational needs of my child 44.9 Yes No 28

SERVICES

10 The IEP clearly stated what specific service(s) my child would be receiving 65.5 Yes No 15

11 The dates for the beginning of services for my child were quite clear 49.6 Yes No 16

12 I know when the IEP services will end for my child 30.5 Yes No 45

13 The service(s) for my child in the IEP was determined by what was available rather than what was needed (for example, if a certain service was known to be needed but the final decision was made based on what the school district currently had) 37.3 Yes No 32

(continued)

CHART I: MAJOR PROBLEM AREAS IN MOST STATES

		# of States Cited for Corrective Action (& DC)
I.	Individualized Education Plans (IEP's)	48
1.	The SEA assures an IEP for each handicapped child served by a public agency.	20
2.	The SEA assures an IEP for each child referred/placed in a private facility by a public agency.	20
3.	The IEP is in effect prior to provision of services.	18
4.	Participants in the IEP meeting include a representative of the public agency, the child's teacher and parents, the child (if appropriate), evaluation personnel, and others necessary.	36
5.	Parent participation includes timely notification, mutually convenient time and place for meeting, and records of attempts to involve parents.	30
6.	The IEP contents are complete and contain present performance level, goals and objectives, special education and related services to be provided, extent of participation in regular education programs, start and length of services, evaluation criteria and procedures.	34

	# of States Cited for Corrective Action (& DC)
II. Procedural Safeguards	49
1. All relevant state agencies have procedures consistent with SEA guidelines.	22
2. Procedures have been implemented to assure: opportunity to examine records; right to an independent evaluation and due process hearing; prior notice and parent consent for evaluation and all placement changes; right to an impartial hearing, to an appeal, and to civil action; adherence to timelines; agreement on child's status during proceedings; and availability of surrogate parents.	49
III. Confidentiality	49
1. Procedures have been implemented to cover: • notice to parents • access rights • record of access • list of types and location of information • fees • amendment of records at parent request • opportunity for hearing • parent consent to release information • safeguards • destruction of records • children's rights • enforcement	48
2. All relevant state agencies have implemented procedures consistent with state guidelines.	20

CHART II: PL 94-142: MONITORING SEA PERFORMANCE (from Program Administrative Reviews conducted by the Bureau of Education for the Handicapped 1977-1980)

x = Corrective Action Required

ATE	STATE	INDIVIDUAL EDUCATIONAL PLAN (IEP)							PROCEDURAL SAFEGUARDS		CONFIDENTIALITY		(MONTHS)
		SEA Assures Public Agency	SEA Assures Private Agency	In Effect Prior to Services	Held Within 30 Days	Proper Participation	Proper Parent Notification	Contents Complete	State Agencies Consistent	Rights Assured	Procedures in Place	State Agencies Consistent	Time Lapse Between PAR & Final Report
/79	ALABAMA					x	x	x	x	x	x		2
/80	ALASKA					x	x	x	x	x	x		6 6
2/77	ARIZONA		x			x	x	x		x	x	x	1
/79	ARKANSAS			x		x		x	x	x	x		1
/78	CALIFORNIA					x		x		x	x	x	1
'78	COLORADO					x		x		x	x		3
'80	CONNECTICUT	x				x	x	x		x	x		3
/78	DELAWARE							x		x	x		0
'78	DISTRICT OF COLUMBIA					x	x		x	x	x		1 4
'78	FLORIDA	x						x	x	x	x	x	3
'79	GEORGIA			x		x	x	x	x	x	x		3
'78	HAWAII	x	x	x	x	x	x	x	x	x	x	x	1 5
79	IDAHO	x				x	x	x	x	x	x	x	12
78	ILLINOIS		x	x			x			x	x	x	7 7
78	INDIANA						x			x	x	x	8
/79	IOWA	x	x	x	x	x	x	x		x	x		3 8
79	KANSAS	x				x		x		x	x	x	7
/77	KENTUCKY	x				x				x	x		0
79	LOUISIANA	x				x	x	x	x	x	x		1
79	MAINE				x	x				x	x		2
77.	MASSACHUSETTS	(conducted before PL 94-142 was to take effect)									x		6
79	MARYLAND	x		x	x	x	x			x	x		0
79'	MICHIGAN	x	x			x		x		x	x		12
79'	MINNESOTA					x		x		x	x		8

CHART II: PL 94-142: MONITORING SEA PERFORMANCE (from Program Administrative Reviews conducted by the Bureau of Education for the Handicapped 1977-1980)

Page 3

x = Corrective Action Required

QTR	STATE	INDIVIDUAL EDUCATIONAL PLAN (IEP)							PROCEDURAL SAFEGUARDS		CONFIDENTIALITY		(MONTHS)
		SEA Assures Public Agency	SEA Assures Private Agency	In Effect Prior to Services	Held Within 30 Days	Proper Participation	Proper Parent Notification	Contents Complete	State Agencies Consistent	Rights Assured	Procedures in Place	State Agencies Consistent	Time Lapse Between PAR & Final Report
/[illegible]	WISCONSIN	x		x	x	x		x		x	x		3 3
/[illegible]	WYOMING	x	x			x	x			x	x		6
	TOTAL	39	28	18	8	36	31	34	22	49	49	19	avg. 3.6

CHART III: PL 94-142: MONITORING SEA PERFORMANCE—The Persistence of Problems in States with 2 PAR's

DATE	STATE	INDIVIDUAL EDUCATIONAL PLAN (IEP)					PROCEDURAL SAFEGUARDS		CONFIDENTIALITY			
		Assurance	Prior to Services	All Participants	Parent Participation	Contents	State Agencies	LEA's	Notice	Access Records	List of Records	Destruction of Records
3/78	ALASKA			x	x	x	x	x	x	x		x
10/79				x		x		x		x	x	
2/78	D.C.	x		x	x		xx	x	x	x		x
4/80		not mentioned					xx	x	not mentioned			
4/78	HAWAII	x						x		x		x
2/80		x	x	x	x	x		x		x	x	
11/77	ILLINOIS	x	x	x		x	x	x	x	x		
11/79		x	x	x			x	x		x		
3/78	NEW HAMPSHIRE			x	x	x	x	x	x			x
1/80		x	x	x	x	x	x	x	x	x		x
3/78	NEW YORK	x					x	x	x	(no agency met all requirements)		
11/79		x	x	x	x	x	x	x	x		x	x
2/78	TEXAS	x	x	x	x		x	x	x	x	x	x
2/80		x	x	x	x	x	x	x		x	x	x
1/78	VIRGINIA	x	x				x	x	x			x
5/80			x	x	x	x	x	x	not mentioned			
8/78	WISCONSIN	x					x	x	x	x	x	x
12/79			x	x		x	x	x	x	x	x	x
5/78	CONNECTICUT	x		x	x	x	x	x	(local policies inadequate)			x
2/80				x	x	x	x	x	x	x		
5/78	IOWA	x				x	x	x	x			x
10/79		x	x	x	x	x	x	x		x	x	x

CHART 11: PL 94-142: MONITORING SEA PERFORMANCE (from Program Administrative Reviews conducted by the Bureau of Education for the Handicapped 1977-1980)

Page 2

x = Corrective Action Required

DATE	STATE	INDIVIDUALIZED EDUCATIONAL PLAN (IEP) SEA Assures Public Agency	SEA Assures Private Agency	In Effect Prior to Services	Held Within 30 Days	Proper Participation	Proper Parent Notification	Contents Complete	PROCEDURAL SAFEGUARDS State Agencies Consistent	Rights Assured	CONFIDENTIALITY Procedures in Place	State Agencies Consistent	(REVIEW) Time Lapse Between PAR & Final Report
3/79	MISSISSIPPI		x			x	x	x		x	x		3
3/79	MISSOURI						x	x	x	x	x	x	3
7/79	MONTANA		x				x	x		x	x		1
7/79	NEBRASKA			x	x		x		x	x	x	x	3
6/79	NEVADA	x	x	x		x			x	x	x	x	6
3/78	NEW HAMPSHIRE		x	x		x	x	x	x	x	x	x	3
10/79	NEW JERSEY		x	x		x	x		x	x	x		4
11/79	NEW YORK	x	x	x		x	x	x	x	x	x	x	x
1/78	NORTH CAROLINA		x	x					x	x	x	x	1
8/78	NORTH DAKOTA	x		x		x		x		x	x		1
4/79	OHIO					x		x	x	x	x		6
3/79	OKLAHOMA		x	x		x	x	x		x	x		1
4/79	OREGON	x	x			x	x	x		x	x		4
7/79	PENNSYLVANIA								x	x	x	x	2
2/79	RHODE ISLAND				x	x	x	x		x	x	x	2
7/78	SOUTH CAROLINA		x			x		x		x	x	x	2
2/78	SOUTH DAKOTA		x			x	x			x	x		7
6/79	TENNESSEE			x		x	x	x	x	x	x	x	1
3/78	TEXAS	x	x	x			x	x		x	x		1 x
2/78	UTAH	x				x	x			x	x	x	1
4/79	VERMONT		x				x	x		x			1
1/78	VIRGINIA	x		x	x		x	x	x	x	x		7
4/78	WASHINGTON	x	x			x	x	x	x	x	x		
2/79	WEST VIRGINIA								x	x	x		1

MAY 2 1980

ILLINOIS DEVELOPMENTAL DISABILITIES ADVOCACY AUTHORITY
One West Old State Capitol Plaza, Suite 917
Springfield, Illinois 62701
(217) 544-6760

iddaa

April 29, 1980

Congressman Paul Simon
Chairman of the House Subcommittee
on Select Education
227 Cannon House Office Building
Washington, D. C. 20510

Dear Congressman Simon:

I have reviewed the Report By The Education Advocates Coalition On Federal Compliance Activities To Implement The Education For All Handicapped Children Act (PL 94-142), and I concur with the general findings of the report.

I believe that there is substantial noncompliance with PL 94-142, and that the Board of Education of the Handicapped has not successfully dealt with noncompliance by state and local education agencies. I urge you through your staff to give serious consideration to the findings and recommendations of the report and to take the action necessary to cause PL 94-142 to be enforced.

If you are interested, because of our intensive involvement with large numbers of families whose children's educational rights are being denied or abridged, we would be happy to provide you with specific examples of noncompliance.

Thank you for your consideration of the issues listed in my letter and in the report.

Sincerely yours,

Stephen B. Schnorf
Executive Director

cc: Children's Defense Fund
SBS/msw

APR 30 1980

p.w.s. inc. post office box 611 mt vernon illinois 62864 phone 618/244-3586

April 25, 1980

Representative Paul Simon, 1724 Longworth, House Office
Building, Washington, DC 20515

RE: Brochure on PL 94-142
SPECIAL EDUCATION

REPRESENTATIVE SIMON, This was distributed at our Board of Education meeting last week. The whole thing is such a piece of junk that I feel compelled to send you this copy with my fervent hope that you'll do something--protest at least!

Item 1, Paragraph 3, (note my underlining)--And this at a time when we're all chafing under excess governmental regulations and red tape.

Item 2, Paragraph 6, Here the federal government would appear to be setting a quota for handicaps. Excess handicapped children in a district unfortunate enough to have a great many of them would presumably have to fend for themselves.

Item 3, Paragraph 7, See item 1.

Item 5, top of page 2, I think we could all qualify under this description. Does the sentence in parenthesis discriminate against the socially maladjusted?

Item 6, Page 3, I don't know what one does to receive the happy title, "Competent Authority" (capitalization not mine) --apparently if one does whatever it is well enough, one is allowed to be a member of the "Competent Authorities Team" (capitalization still not mine) a description of the team uniform is not given but membership entitles one to give "multi-sourced" (not to mention "multifaceted") in depth (as opposed to "in shallow"?) evaluations every 3 years in addition to the annual evaluations of each special education child.

It is not exactly news that the public is unhappy with superfluous and redundant regulation and weary of a heavy tax burden and a galloping rate of inflation. This type of mandated program drains our purses, burdens our staffs, crowds our facilities and takes from our regular educational program to give to Special Education.

Speaking out against Special Education appears to be the equivalent of kicking one's mother and starving one's dog but I cannot remain silent. I wish all children could have an Individual Education Program and a complete staffing (even if by our "Competent Authorities Team"). Since this is impossible, we should endeavor to serve all children as equally as possible.

Somebody out there do something!

Cordially,

Patricia W. Shaw

Patricia W. Shaw
Board of Education
District 201

PWS:jjb

Enclosure

FRANKLIN-JEFFERSON COUNTIES
SPECIAL EDUCATION DISTRICT
MT. VERNON, ILLINOIS 62864

SPECIAL REPORT

PL 94-142 ISSUE

MARCH 1980

School Districts in the Franklin-Jefferson Counties Special Education District are in the process of implementing a unique federal law, The Education For All Handicapped Children Act of 1975 (PL 94-142). This Special Report looks at issues and regulations mandated by the law.

PL 94-142: So That Each Child May Learn

Public Law 94-142 is unlike any other federal assistance program ever developed for public education. The law which mandates publicly supported education for all handicapped children between the ages of 3 and 21 sets unprecedented regulations for the implementation of this law.

The most immediate and obvious change resulting from this law is that it mandates (to the maximum extent possible) that handicapped students must be placed in classes with nonhandicapped students.

ITEM 1

More subtle changes are evident in the administration of the program itself. Unlike other federal aid programs which establish basic regulations and leave administrative procedures to state and local school systems, PL 94-142 sets up numerous rules, some as specific as who shall sit in on conferences and how they shall be notified.

Money for implementation of PL 94-142 is tied to the average number of children ages 3-21 who are receiving special education and related services counted on December 1.

The funding formula is based on the percentage of the average per pupil expenditure (APPE) in the school. Beginning October 1, 1977, 5% of the APPE is multiplied by the total number of handicapped children. In ensuing year the percentage rises to 10% in 1979; 20% in 1980; 30% in 1981; and 40% in 1982 and thereafter.

ITEM 2

Among the many regulations which accompany this legislation is the requirement that no more than 12% of the total school population can be counted as handicapped.

ITEM 3

Compliance with this law is mandatory. Even if a school district feels that the regulations are too complicated to make the program worthwhile for its school system, the law applies whether federal money is used or not.

There are many rules and regulations attached to the funding provided for implementation of PL 94-142. Here are seven basic regulations:

School systems must:

ITEM 4

(1) draw up individualized education programs for each handicapped child;

(2) "to the maximum extent possible" have handicapped children educated with children who are not handicapped;

(3) provide physical education for each handicapped child comparable to that provided for a normal child;

(4) use tests and evaluations (in the child's native language or form of communication) which are not racially or culturally discriminatory;

(5) provide procedural safeguards for parents and children;

(6) furnish "such information as may be necessary to evaluate this program ... including information relating to the educational achievement of handicapped children;" and

(7) keep all records available to the public while at the same time preserving the confidentiality of the child.

These Terms Explain "The Education of All Handicapped Children Act."

SPECIAL EDUCATION — specially designed instruction, at no cost to parents or guardians, to meet the unique needs of a handicapped child, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions. Transportation and such development, corrective and other supportive services as required to assist a handicapped child to benefit from special education are also provided. These services may include: speech pathology and audiology, psychological services, physical and occupational therapy, early identification, and assessment of disabilities in children, counseling services for evaluative or diagnostic purposes. The program also allows provisions for school social workers, parent counseling and training, information to parents about child development and assistance to parents in understanding the special needs of their child.

HANDICAPPED CHILDREN — mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired or other health impaired children, or children with specific learning disabilities who require special education or related services.

DEAF — a hearing impairment which is so severe that the child's hearing is nonfunctional in school.

HARD OF HEARING — an impairment, whether permanent or fluctuating, which adversely affects a child's educational performance.

MENTALLY RETARDED — significantly subaverage general intellectual functions which also includes "defects in adoptive behavior."

ORTHOPEDICALLY IMPAIRED — a severe orthopedic impairment which adversely affects a child's educational performance.

OTHER HEALTH IMPAIRED — limited strength vitality or alertness due to chronic or acute health problems such as heart condition, TB, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, leukemia, diabetes, etc.

ITEM 5

SERIOUSLY EMOTIONALLY DISTURBED — a condition exhibiting one or more of the following: (a) an inability to learn which cannot be explained by sensory or health factors; (b) an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; (c) inappropriate types of behavior or feelings under normal circumstances; (d) a general pervasive mood of unhappiness or depression; or (e) a tendency to develop physical symptoms or fears associated with personal or school problems. (This does not include students who are socially maladjusted).

LEAST RESTRICTIVE ENVIRONMENT — special education placement which places the least restriction on a normal school environment as possible. The following show a continuum from least restrictive to most restrictive:

a. A regular classroom situation.
b. A regular class with the help of a resource teacher in the classroom or part-time in a resource room.
c. A resource room and integration with a few classes such as art, music, and p.e.
d. A self-contained special classroom for all or most of the day.
e. A special school for handicapped children within the school system.
f. Temporary instruction in a home or hospital.

RESOURCE ROOM — an instructional setting where a child may come for specific periods of time, up to 4 hours per day, usually on a regular schedule. The resource room provides a supportive service which allows the child to succeed in his regular classes.

RESOURCE TEACHER — a special education specialist who assists the classroom teacher with the academic development of the child both in the regular classroom and in the resource room. The Resource Teacher is a working member of the school staff and not a visiting teacher.

Implementing Public Law 94-142 Is A Six-Step Process

1. IDENTIFICATION

There are three sources of identification of special education children — parents, school personnel and members of the community. Classroom teachers or a nurse may discover a problem as they work with individual children. If a special disorder is noticed, the parent will be notified and a first attempt will be made to modify the classroom situation in order to meet the child's need.

When children with special needs have been identified, the next step is to begin a screening process.

2. SCREENING

A committee composed of some of the following people: teacher, principal, resource teacher, psychologist, guidance counselor, and school nurse conduct the screening process. They compile a complete medical and family history of the child and give appropriate tests to determine if the child has a potential need for special education. If their results indicate that the child should have a complete evaluation, the parents are notified and must agree to continuation of the process.

3. EVALUATION

The evaluation is "multifaceted and multi-sourced." It may include educational, psychological, adaptive-behavior and psychomotor examinations, medical examinations, and speech and language evaluations. The evaluation is conducted by teams of professionals who have been designated as Competent Authorities because of their special training in this field.

4. PLACEMENT

Using the data gathered during the evaluation by the Competent Authorities Team, school officials place the child in the "least restrictive" educational environment where his special needs can be met. The goal is to administer to his present needs and then move him into a mainstream situation as quickly as possible.

At this time the principal or designee, the Special Education teacher, the parent, and possibly the child develop an individualized educational program for the child (IEP). Again, parents have full due process rights if they disagree with the placement or the educational program.

5. INSTRUCTION

If at all possible instruction takes place both in the regular classroom and in the resource room provided at each school for special education students. However, some students may be placed in a more restrictive service if this type setting is more appropriate for the child. The resource teacher may assist the regular classroom teacher in fulfilling the requirements of the IEP. Instruction may also include medical services, therapy, and counseling.

6. EVALUATION

At least once a year the child's IEP must be reviewed and updated to adjust to his rate of progress. In addition, in-depth Competent Authorities evaluations are required every three years.

Warning Signs of a Possible Learning Disability

- Failure in reading, spelling, writing or arithmetic, particularly if the teacher says the child could do the work if he/she would only try.
- Poor coordination.
- Difficulty in telling right from left.
- Impulsiveness or overactivity; ease of distraction.
- Confusion in language or speech; failure to understand what is said.
- Frequent display of anxiety or anger because of inability to cope with school or social situations.

An Individualized Educational Plan Is Required For Every Handicapped Child

Within 30 days after identification of a handicapped child, school authorities must develop an individualized education plan designed to meet the needs of the child. This plan must be developed jointly by the principal (or designee), teacher, the parent or guardian, and if appropriate, the child.

The program must include: (a) a statement of the present level of educational performance; (b) a statement of the goals and objectives; (c) a statement of the specific educational services to be provided; and the extent to which the child will be able to participate in the regular instructional program; (d) the projected date for initiation and duration of these services; and (e) the procedure of evaluating whether the objectives have been achieved.

So important is it that the parent take part in developing an IEP that special regulations mandate the extent to which educators must attempt to get the parent present. Every reasonable effort must be made to involve the parents in the IEP at a "mutually agreed time and place." The school must keep detailed records of calls, correspondence and visits to the home or place of employment of a parent who refuses to attend a meeting.

An IEP must still be written on each child even if the parent chooses not to attend the conference.

Specific Regulations Protect the Rights of Parents in the Education of the Handicapped

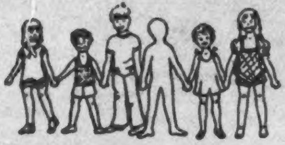
There are strict procedural regulations in PL 94-142 designed to protect the rights of parents of special education students. They are guaranteed the right to examine all relevant records regarding identification, evaluation, and placement. School authorities must send "written prior notice" if any change is proposed in the education, evaluation, or placement of the child.

If the parents disagree with procedures prescribed by the school authorities, they must be given a chance to present formal complaints about the action. At all times they are guaranteed due process through a hearing with an officer who is not an employee of the local school system.

At this due process hearing the parent may be accompanied by counsel or a person with special knowledge of the child. Parents are guaranteed the right to present evidence, confront educators, cross-examine, and even compel attendance of witnesses. They have the right to recordings and reprints of the findings and decisions of the hearing.

Parents who are not satisfied with the decision handed down at the hearing may appeal to the state for an impartial review of the case. Should they still be unsatisfied after this appeal, they may bring civil action in a state or federal court.

A SPECIAL CHILD IS MISSING



IF WE CAN FIND HIM, WE CAN HELP HIM.

The Franklin-Jefferson Counties Special Education District conducts an annual screening with cooperation of local districts in attempting to locate all special children.
The aim of the multi-media approach is to make the citizens of the community aware of the needs of handicapped children.

OCT 24 1980

SCHOOL DISTRICT NO. 5

Phone 755-5015 - P.O. BOX 788 - KALISPELL, MONTANA 59901

October 20, 1980

The Honorable Paul Simon, Chairman
Subcommittee on Select Education
Suite 320 Cannon Building
Washington, D.C. 20515
Attn: Diana Cregger

Dear Sir:

This letter is for inclusion in the regional hearing record on PL 94-142.

Our school district, under the directions of the Director of Special Services, has run a survey among special education staff in regards to the concerns that they have on PL 94-142. The staff concerns are as follows:

1. The staff objected to the Law as it ties up teacher instruction time as related to the standards of people required to be present at I.E.P. and C.S.T. meetings. Teacher instruction loss of time must be minimized.
2. Concern related to the need of a more expedient way of enrolling students in resource rooms was expressed. The current process is too slow and time-consuming for child, staff, and parent.
3. The Law is heavily directed toward serving the mentally retarded and merely alludes to serving the learning disabled. These overtones are confusing to parents of learning disabled childred when they attempt to relate the Law to their children. Most of parent unrest in relation to the Law is with those parents of learning disabled children as opposed to parents of mentally retarded children, because the needs of these two types of handicapped children are so different. Yet, the Law fails to distinguish in its interpretations and mandates between these two types.

Our school district is doing everything to live within the letter of the law in regards to PL 94-142, but has a great deal of concern about the failure of the US Legislature to fund mandated specific programs.

If your office has any questions in regards to any of the above, please feel free to contact my office.

Sincerely,

Ken Siderius

Ken Siderius
Assistant Superintendent

KS/bjs

As I See It

by John Goodspeed Stuart
Superintendent of Schools

District Policy 6000, which spells out the goals of education for the Aurora Schools, did not elicit any questions or comments in the last issue of REPORT. I had hoped that listing District goals would spark some interest, but I was wrong again. Perhaps I can generate some opinion by discussing special education. I may even be able to precipitate some violent reaction or a law suit. Certainly, few topics touch the parents of a handicapped child more forcefully than discussion concerning the rights and opportunities for their child's education.

These brief comments will not be couched in legalistic terms. Hopefully, I can present one concern in the simplest possible language. Right now, school districts across the state of Colorado and elsewhere in our nation are grappling with the issue of who should provide education services for the severely mentally handicapped child. We are told that the federal government requires that every child have access to an equal educational opportunity. The state interprets this to mean that every child is entitled to attend local public schools. Surely, no one questions the right of every child who is able to learn and conform to reasonable standards of good conduct and behavior to attend the public schools. But was the American common school – a unique system of public education for all – intended by our legislators and school boards to apply to children in need of custodial care?

Josh Greenfeld, author of *"A Place for Noah,"* traces the complexity of trying to find institutions and experts who will care for his autistic child. Unfortunately Josh Greenfeld wanted more for his son, including his intensity of love and caring, than he was able to obtain from others. Mr. Greenfeld wanted public institutions and their representatives including teachers, physicians, psychologists, therapists and numerous other specialists, to come up with some viable answers to help him in his coping with a seriously handicapped child. But strangers can never give the same love as a caring parent and none of the specialists withheld information about helping Mr. Greenfeld's son. They simply didn't have the answer to his questions. Science, including education and medicine, has a long way to go in discovering the causes and cures for many forms of mental and physical handicaps.

All the wishes in the world will not make it possible for us to deal with every kind of mental handicap. We are doing a fine job with certain kinds of handicaps but now we are being asked —no, required – to deal with all children. Of course, if that is the law, we will do our best.

It seems to me that if I were the parent of a severely handicapped child, instead of forcing public school educators to accept my child in their institution, I would seek to have the child placed in a good specialized institution and ask the state to provide the best possible expertise which might help my son or daughter. It seems to me that grouping the very severely retarded children in an environment in which we could afford the expertise is more likely to produce rewarding advances in the training of the youngster than enrolling him in a public school class which is ill prepared to deal with the problem and probably will never be able to afford the expertise required if any real good is to come of it.

I know that my opinion is not shared by everyone. It is almost impossible to view these problems from the perspective of the affected parent or student. By the same token I think it is very difficult for those who must cope with the problem to understand how teachers and other parents feel about it. One thing is certain: "There but for the grace of God go I." I hope no parent of a severely retarded youngster feels that I or others like me don't have some empathy with the problem. We are all groping for a solution and it hasn't been found yet.

REPORT
THE YEAR
IN REVIEW
Aurora
Public Schools

Richard F. Surber, Director
David J. Wood, Assistant Director

Northwest Indiana
Special Education Cooperative
3130 West 97th Avenue - Crown Point, Indiana 46307 • (219) 663-4980 769-4020

SEP 26 1980

September 23, 1980

Honorable Paul Simon, Chairman
Attn: Diane Gregger
Subcommittee on Select Education
Committee on Education and Labor
320 Cannon H.O.B.
Washington, D.C. 20515

Dear Sir:

Recently I was asked to conduct a survey of the chief administrative officers of the public school special education programs within Indiana. This was requested of me by the Indiana Council of Administrators of Special Education. The topic was what specific problems are your schools having in the development and implementation of individual educational plans as required by PL 94-142? Listed below are the more pertinent and persistent concerns:

1. Guidelines are needed for appropriate related services. (Related to this issue is the availability of qualified personnel).
2. Documentation of the compliance with all of the legal requirements is a burden. Perhaps the documentation burden should be placed on those who allege non-compliance.
3. The requirement of case conferences, annual case reviews, and IEPs for speech therapy is of questionable value and wastes valuable staff that that could be put to much better use in instruction.
4. It is near to impossible to involve people in a conference in which they do not wish to participate, and this often causes a poor relationship between regular educators and special educators at a time when the emphasis is on more participation in the regular program.
5. Local districts are being pressured to inservice staff to meet the needs of apparent inadequacies of pre-service training. It appears that a study of current pre-service training should be conducted to alleviate this pressure in the future.
6. Teacher and administrative stress is increasing in special education because of the excessive legal requirements of PL 94-142 and Section 504.
7. There is a serious problem in finding the "happy medium" between IEP goals that are too general or too specific. Guidelines on this issue are essential and perhaps state approved models could be distributed.

8. There are serious problems in specifying classes when a change of schools is made---particularly secondary schools.

9. Parental input is often minimal yet staff time is still wasted. Parents often show up late or do not show at all. Provision should be made to start the meeting at a previously agreed upon time regardless of parental presence.

10. There are some who believe that the original case conference should deal with program eligibility and placement, and the quality of the IEP could be improved if it was written at a later date by those who will receive the new student. This could still be subjected to the parents' due process rights.

11. Parents and advocacy groups appear to be well-informed about the requirements of the law but poorly informed about what the law does not require. Guidelines would be useful.

12. The logistics of bringing the required people together for a conference continues to be a serious problem. Conflicts continue between the teacher's contracted day and the parents' working day. Administrative and psychological services staff time is poorly utilized in many case conferences.

13. There appears to be a great difference in the emphasis placed on informing parents of their rights from state to state. Indiana requires that this be accomplished three times during the placement process.

Your committee's attention to these concerns will be appreciated.

Respectfully,

Richard F. Surber

Richard F. Surber
Director

RFS/am

Arapahoe County
SCHOOL DISTRICT 6
LITTLETON, COLORADO

special serv
5793 south
littleton,
zip code 801

'JUL 7 1980

June 26, 1980

The Honorable Ken Kramer
House of Representatives
Washington, D.C., 20515

Dear Mr. Kramer:

Mr. Kenneth P. Schoonover, our Superintendent of Schools, and I have discussed your request regarding input for the changes that may be necessary in Public Law 94-142 and Section 504 of the Rehabilitation Act of 1973. Basically, we feel that both laws are excellent and provide the necessary impetus for serving those individuals who have previously received inadequate or no service. We can and have developed a process whereby the entire Public Law 94-142 has been implemented, we think to an optimum level, serving the most severely involved children first. However, there are two issues which we wish to address:

1. What we feel to be the misuse of hearing officers and appeals to the court. Unlike other districts, our appeals and litigation have related to the district wanting to serve the children and the parents refusing the service, attempting to force the district to purchase private intervention (education/therapy), when those are all available within our district. To date we have spent in one case alone $10,000 which does not include staff time, transportation, etc. In other words the due process afforded to parents has been misused, the district having no recourse except to allow the parents this tremendous expenditure. The real problem results in the backlash caused by this unnecessary expense, which has no direct benefit to handicapped students. Incidentally, the hearing officers in the initial hearing and the appeal hearing have both ruled in favor of the school district. It would be my suggestion that unless there is blatant discrimination by the lack of service provided to a student that the present process be short-circuited so that we may proceed directly to a federal legal action with a forty-five day timeline, and/or be able to have the situation reviewed by a panel, whose decision would be binding.

2. Under 94-142 the schools have become responsible for a number of things which we previously had not been in terms of "psychotherapy," medical evaluations, physical and occupational therapy. If we are now responsible for these I would suggest that the financial support given to other agencies previously for the provision of these services be removed from them and given to the school districts, so that we are not double funding and to help lighten the burden in these inflationary times.

Sincerely,

Dennis Svaldi

Dennis Svaldi
Director of Special Services

ps4/8

cc: Ken Schoonover, Superintendent of Schools

MAY 13 1980

Citizens' Council for Ohio Schools

517 The Arcade, Cleveland, Ohio 44114—(216) 621-5230
1501 Neil Avenue, Columbus, Ohio 43201—(614) 424-6345

May 9, 1980

The Honorable Paul Simon
Chairman
House Subcommittee on Select Education
227 Canton House Office Building
Washington, D.C. 20510

Dear Congressman Simon:

The Education Advocates Coalition released a report in mid-April on efforts by the Bureau of Education for the Handicapped to enforce the provisions of the Education for All Handicapped Children Act, and on major problems of non-compliance.

The Citizens' Council for Ohio Schools is concerned about the findings of that report. Although Special Education is not our main program area, a review of Office for Civil Rights data on placement by race in special programs, and contact with others who work with the handicapped, indicate that the non-compliance problems outlined in that report are problems in Ohio.

The Council endorses a strong federal compliance mechanism in order for the intention of the law to be fully met. For this reason we encourage you to take the action needed to strengthen the Department of Education's compliance process, and to hold oversight hearings on this issue so its significance for children might be fully understood.

Thank you for your interest.

Sincerely,

Rachel B. Tompkins

Rachel B. Tompkins, Ed. D.
Director

RBT:wsl

cc: Daniel Yohalem, Education Advocates Coalition

Staff: Rachel B. Tompkins, Ed.D., Director/Cleveland; Susan C. Kaeser, Staff Associate/Cleveland; Laurence T. Harker, Consultant/Cleveland; Carla J. Edlefson, Ph.D., Staff Associate/Columbus; Kathleen T. Swanson, Staff Associate/Cleveland
Trustees: Rowland C. W. Brown, Chairman; Jeffrey R. Bergen, Vice Chairman; Robert H. Allen, Melvin Berger, Ruth J. Boyd, Hugh Calkins, O. Eugene Chandler, Sue Crawford, Doris A. Evans, M.D., David L. Gonger, Phyllis Greer, Owen L. Heggs, Charles F. Kurfess, Joan W. Lawrence, William H. Liggett, Frank Lomon, III, Betty L. Mason, Harry E. Mayfield, J. W. McSwiney, Charlotte Nichols, Sadie H. Odom, Martin R. Rawson, Mary L. Rutledge, William P. Sheehan, C. William Swank, Nelson S. Talbott, Joseph Tomasi, Alice H. Weber, M. Brock Weir

1018 Bedford Lane
St. Louis, Mo. 63011
24 Sept. 80

Marilyn McAdams
House Subcommittee on Select Education
227 Cannon
Washington, D.C. 20510

Dear Ms. McAdams,

I am enclosing a copy of our organization's testimony from the Oversight Hearing (94-142) in Kansas City on 22 Sept 80 per the recommendation of Mark Dubin at CDF. I also wish to draw your attention to the fact that several written testimonies were introduced at the same time, although not verbally presented. They are from:

Elizabeth Decker
Judy Lorino
Carol Freyling/Citizen Advocates for the Severely Handicapped
Betty Jordan
Kenneth Chackes/ Mary & Robert Yaris
Susan Sappington
Kathleen King

We would greatly appreciate it if these received appropriate attention as we went to great lengths to round up this information in the few short days we had to prepare for the hearing. In addition, there is another matter, embarassing for me, that I should point out. I submitted quite a large envelope of evidence/documentation to support our testimony. Unfortunately, in the rush to get to Kansas City in time, I neglected to have the cover letter typed up. So, in the envelope was my draft letter. I am actually mortified to have submitted such a rough copy. Please accept my apologies. In defense of myself, I should state that considerable attention was devoted to informing others about the hearing in order that they might participate....hence my "indiscretion".

Again, we wish to thank the Committee for allowing us the opportunity to testify. We sincerely hope that the information is useful.

Yours truly,

Madeline E. Wendland

Madeline E. Wendland, President
Missouri Coalition of Child Advocates, Inc.

TESTIMONY

PL 94-142 OVERSIGHT HEARINGS - KANSAS CITY - 29 SEPTEMBER 80

HOUSE SUBCOMMITTEE ON SELECT EDUCATION

PRESENTED BY: MADELINE WENDLAND, MISSOURI COALITION OF CHILD ADVOCATES, INC.

Good afternoon.

My name is Madeline Wendland. I represent the Missouri Coalition of Child Advocates, an organization concerned with the implementation of appropriate education for handicapped children. Incorporated just this August, we serve an expanding 5 county area.

Most of our experience to date has been in St. Louis County which includes some 13,000 handicapped children from 23 local school districts. St. Louis County is fairly unique in that the education of ALL of its handicapped children is the exclusive responsibility of a single agency....the Special School District of St. Louis County. The local Districts are then absolved of any and all responsibility. Missouri gives this arrangement its blessing in its current State Plan ——"Each school district, except those districts included in a Special district, and each special district, shall develop a plan and implement education services for handicapped students."

In this Coalition's short existence, we have received or been made aware of virtually hundreds of complaints. In almost every instance, three specific problems stand out:

First: Since PL 94-142 has not hit the top of the best seller list and since little effort on the part of the Special School District is made to effectively inform, PARENTS SIMPLY DO NOT KNOW THEIR RIGHTS. This is certainly evidenced by the relatively few consumer advocates testifying here today. These people are casually and neglectfully run over by the system. The Special District IEP manual urges professional staff to inform parents of their rights only "when appropriate". This, along with the documented practices introduced in our written testimony, is an insidious attempt to circumvent the basic procedural safeguards. We are talking about discriminatory evaluation practices, canned and incomplete IEPs, illegal assignments, failure to implement services, failure to contract for services, denial of due process, failure to heed instructions of a hearing panel, and segregation——just to name a few. This leads to the Second Problem:

Approximately 90% of the complaints indicate violations of basic rights and procedural elements of the law. Narrow and economically convenient interpretations of existing statutes and regulations frustrates the basic intent of the 94-142 legislation. In an education system so large in student population and geographical area, rooting out causative factors is nearly impossible. The organization of education for handicapped children in St. Louis County is entrenched in an administrative system that can very effectively avoid compliance to federal mandates by its complexity and can shift responsibility in a most expeditious manner. This same system, in a befuddled attempt to implement the least restrictive environment provisions of 94-142 pays what it calls "INTEGRATION FEES" to any local school district willing to accept handicapped children. And so, it is left to the whim or good nature of our local school districts whether or not to accept these children into THEIR schools. How this disgraceful situation could exist is the question leading to the Third, most critical problem:

LACK OF COMPLIANCE ENFORCEMENT.

At the State level, the problems are failure to develop effective monitoring procedures as confirmed by a conversation with the State Plan Office at the Office of Special Education (OSE), failure to respond and act on individual complaints as verified by our written evidence and, most important, the flagrant disregard for PL 94-142 by absolving the local school districts of any responsibility for handicapped children in the current State Plan. This has created dichotomies in that many services available to non-handicapped children are not available to handicapped children in either adapted or regular form. In numerous letters with the Missouri Department of Elementary & Secondary Education in the last few months, I attempted to promote enforcement actions with regard to violations of sections 121a.305 and .306—Program Options and Non-Academic Services. Our own daughter represents a class of children who, according to the Special District are not handicapped enough to receive summer programming. Keep in mind that this same District at its July 30 public budget hearing announced assets in excess of 4 BILLION dollars. According to our local school district, they do not ACCOMODATE handicapped children. In one of several written attempts to evade the issue at hand, Assistant Commissioner Leonard Hall stated, "...I am not able to offer you any regulatory assistance..." Repeated and fruitless attempts to gain State regulatory assistance led to my filing a formal complaint with OSE this July. At the federal level, I discovered that the situation is even more absurd. Our Compliance Specialist told me point blank that there was nothing they could do. During the course of several phone conversations, I learned of the thousands of letters from parents received by OSE. This taxes their capacity just to open and read the letters...much less do anything about them. From our own experience, letters took at least two weeks just to be opened.

I suppose I should not be surprised considering this is the agency that recently approved the Missouri State Plan with its segregationist policies. This kind of negligence is perhaps the strongest indicator of the magnitude of the problem. Failure to develop effective policies to enforce compliance to already adequate statutes and regulations thwarts the full implementation of PL 94-142 in the State of Missouri.

Please refer to our written testimony for verification of complaints, specific details and evidence.
Thank you.

Madeline Wendland, President
Missouri Coalition of Child Advocates, Inc.
1018 Bedford Lane
St. Louis, Mo. 63011
(314) 227-1391

SUMMARY OF INFORMATION SUPPLIED FOR THE HEARING RECORD BY MADELINE E. WENDLAND, PARENT, BALLWIN, MISSOURI

Mrs. Wendland provided excerpts from the Missouri three year plan (beginning in FY'81) for P.L. 94-142; copies of newspaper articles concerning special education services in Missouri, and copies of correspondence between Mr. and Mrs. Wendland, local, state, and federal officials.

Mrs. Wendland's information reflects her interest in and concern for the provision of a free appropriate education for her daughter who is handicapped.

Some of the issues highlighted in the information submitted by Mrs. Wendland are:

1. the provision of related services, particularly occupational therapy;

2. access to child's records for the purpose of periodic review;

3. specificity in individualized education programs;

4. observance of timelines in assuring procedural guarantees and due process;

5. ability of parents to encourage modificiation of school records;

6. impartiality of local due process hearing officers;

7. access/ability to record meetings held with school officials;

8. timeliness and substance of state and federal oversight of local programs;

9. specificity in state and federal policy concerning the provision of a free appropriate education to handicapped children that exceeds 180 day school year.

*The complete record supplied by Mrs. Wendland is filed in the office of the Subcommittee on Select Education.

James E. Wiggins
11023 East Fifth Ave.
Aurora, CO 80010

August 6, 1980

Congressman Ken Kramer
Congress of the United States
House of Representatives
Committee on Education and Labor
Room 320, Cannon House Office Building
Washington, D.C. 20515

Dear Congressman Kramer:

Please excuse the delay in responding to your request, made during the Public Hearings on P.L. 94-142 in Aurora, Colorado on June 27, 1980, to make some specific recommendations in regard to "Related Services" as contained in P.L. 94-142.

The delay was caused on my part with a desire to double check my perceptions of the rules for P.L. 94-142, review some of the problems associated with related services which the District has encountered, and reflect some of the common perceptions held by parents and some legal advocates.

I feel that the intent of P.L. 94-142 was to guarantee the handicapped child an opportunity for an education on his performance level, and those services necessary for the child to avail himself of that educational opportunity - an equal opportunity law rather than an education law.

If the intent is correctly stated, it is my opinion that the P.L. 94-142 Rules pertaining to "Related Services" (121a.13) go far beyond the intent of the law and, in effect, change the historical role of the school from education to a care and treatment center, in addition to providing special services to non-students. It has always been my understanding that the purpose of "Rules" was to clarify and give direction for the implementation of the law rather than add to the law. For example, 20 U.S.C.1417 states, "The term 'related services' means transportation and such developmental, corrective, and other supportive services (including speech pathology and audiology, psychological services, physical and occupational therapy, recreation, and medical and counseling services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a handicapped child to benefit from special education, and includes the early identification and assessment of handicapping conditions in children." (Underlining is mine.)

The "Rules" 121a.13 'Related Services' has expanded this definition to "the term also includes school health services, social work services in schools and parent counseling and training." The question is not whether the additional services are good or bad, but was it the intent of Congress to provide those services? I feel that if Congress had wanted those services included, they would have included them.

Within the definitions of some of the related services, there appears to be a tendency, in my opinion, to go beyond the original intent of providing educational opportunity and actually become a care and treatment center. For example, Rule 121a.13 (5) "Occupational Therapy" "(i) Improving, developing or restoring functions impaired or lost through illness, injury, or deprivation; (ii) Improving ability to perform tasks for independent functioning when functions are impaired or lost; (iii) Preventing, through early intervention, initial or further impairment or loss of function." This definition appears to go far beyond that which is "required to assist a handicapped child to benefit from special education," and, in fact, mandates the schools into a care and treatment agency.

The same statement may be made for the following definition within the area of "Related Services" 121a.13 (b) "(iv) Creation and administration of programs for prevention of hearing loss; (vi) Determination of the child's need for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification." (Underlining is mine.)

121.a.13 (8) "Psychological Services"..."(v) Planning and managing a program of psychological services, including psychological counseling for children and parents." This related service forces the local district into a care and treatment center for psychological disorders of the student and family.

121a.13 (11) "Social work services in schools include: "(ii) Group and individual counseling with the child and family." Again, this is treatment oriented. "(iv) Mobilizing school and community resources to enable the child to receive maximum benefit from his or her educational program." This does not appear, at first reading, to have a significant impact on programming for a handicapped student. However, it contains a statement that does not appear in the Law, is not mentioned in Section 504 of the Rehab Act and could have a fantastic financial impact on local districts and again goes far beyond the intent of P.L. 94-142 "to receive maximum benefit from his or her educational program." This could mean that the school district could be responsible for all life support needs of a student in addition to all the psychological needs of student and family. Since social work services were not even mentioned in P.L. 94-142, this is a requirement forced on the districts by the rule making authority in the Department of Education.

Continuing on through the definitions, Rule 121a.12 "Speech Pathology" contains a similar statement as was in the definition of "Occupational Therapy" "(iv) Provisions of speech and language services for the habilitation or Prevention of Communicative Disorders." (Underlining is mine.) Again, a confusion about what is "required to assist" and the cure or prevention of a condition.

It was my impression of the Law that P.L. 94-142 was designed to provide an educational opportunity to handicapped children - not treat, cure, or prevent handicapping conditions, or change family life styles by psychological counseling. If the schools are truly responsible to treat, cure, or prevent handicapping conditions, the resources available to the schools must be increased dramatically in the very near future.

The prevalant thought among parents and others, including some insurance companies, is that if the student has a handicapping condition and any of the needed services are listed under P.L. 94-142, "Related Services," whether or not it is "Required to Assist," it is the responsibility of the public school to provide that service at no cost to the parent. This includes conditions which exist for the child's full day in the home, school, and community, and in the absence of firm, clear guidelines from the Department of Education, becomes the responsibility of the schools.

I would like to recommend the following changes in P.L. 94-142 and/or "Rules."

1. 20 U.S.C. 1416, 121a.14 of the "Rules." The term special education means specially designed instruction, at no cost to parents or guardians, to meet the curriculum needs of a handicapped child, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions.

2. 20 U.S.C. 1417, 121g.13 of the "Rules." The term "Related Services" means transportation and such developmental and supportive services (except that medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a handicapped child to avail himself or herself of the opportunity provided by special education, and includes the identification and assessment of handicapping conditions in children.

3. Delete from the "Rules" those items under "Related Services" that are not contained in P.L. 94-142.

One final thought. In view of the rules for Section 504 of the Vocational Rehabilitation Act, which is an equal opportunity law and enforceable in the Courts, it may be more effective and cost efficient to amend Section 504 to include a special education appropriation and rescind P.L. 94-142 as redundant. This would allow doing away with the whole office of Special Education in the Department of Education, less conflict between departments, and a savings to the government and taxpayers.

Sincerely,

James E. Wiggins

PREPARED STATEMENT BY VICKI L. WILLIAMS, STAFF ATTORNEY, PROTECTION AND ADVOCACY AGENCY FOR DEVELOPMENTAL DISABILITIES, TULSA, OKLA.

The purpose of this report is to highlight some of the many problems that handicapped children face when they enter, or attempt to enter, the Oklahoma educational system. In spite of Public Law 94-142 and Section 504 of the Rehabilitation Act of 1973, which were designed to facilitate education of the handicapped, these children are still being denied an appropriate education. The fault lies not only with the State Department of Education and local school systems, but also with the investigative and enforcement areas of the federal government; specifically, the Office of Special Education (formerly Bureau of Education of the Handicapped), and the Office of Civil Rights. At present, the only possible effective recourse is with the Court system, which is of course very expensive and time-consuming.

Office of Special Education (formerly Bureau of Education of the Handicapped

In the past, BEH has been unresponsive to the needs and problems of handicapped children in Oklahoma. Numerous complaints and requests for assistance have been filed with that office (see Appendix A). However, generally there has been no response, or if there is a response, there has been no follow-up. The attached letters are just a sample; we have many more in our files. This office finally ceased its efforts to involve BEH because no assistance was forthcoming.

BEH in its capacity to inspect and approve State Plans, has consistently approved the State Plan submitted by Oklahoma. However, the Plan is only a paper document; there has been little or no monitoring by BEH to see that it is being followed. It is mere token compliance with the law.

Oklahoma State Department of Education

The State Department of Education shows little or no interest in the education of handicapped children. It seems the interest it does show is negative.

The State Department, through itself and the local systems, co-ops, and resource centers, has control over the entire process, from evaluation, IEP, and placement through the appeals process. Evaluations requested by the schools are done by Regional Service Centers (operated by the State Department). Many local schools place handicapped children in so-called co-ops, ie. isolated facilities; such practice is condoned by the State Department. On numerous occasions, IEP's have been written before parents arrive at the meeting. Thus, this is placing children into programs and not addressing their individual needs.

The State Department controls the due process hearings through appointment of hearing officers. The State Department also has, in several instances, denied a parents request for a due process hearing. See Appendix B. If a child wins due process, however, the school generally appeals. The appeal, in most cases, results in reversal of the hearing officers' decision. Appeals are made directly to the State Department. Dr. Maurice Walraven, Director of Special Education, serves on the appeal board and appoints the other appeal officers. This agency is hesitant to represent parents in due process hearings because the process has turned into a farce, a waste of time and money. The due process hearings mandated under P.L. 94-142 are no longer an effective recourse for parents who disagree with the school district.

Section 121a602 complaints have been filed with the Department, but no real response has been received. See Appendix B.

Office of Civil Rights

Enforcement of Section 504 is a major problem here. Many complaints have been filed with OCR-Dallas. In the past, schools have been investigated and often cited with violations and for non-compliance. But schools have recently begun to realize there is no 'bite' to an OCR investigation. That is, to our knowledge, there has never been any enforcement of federal funds being withdrawn. Once an investigation is completed, schools continue their old pratices of ignoring handicapped children. They can do this because nothing will be done. We need some kind of real enforcement mechanism. A lesser one, than withdrawal of funds, would be easier to administer and more certain (hopefully). The problem is that withdrawal of funds is such a drastic measure that it cannot be taken seriously.

Even more alarming is the fact that recently OCR's attitude seems to have changed. It is hesitant even to find violations, or to investigate at all. This coincides with, although it may be irrelevant, the change from HEW to the Department of Education.

The following is a sample of the problems we face:

Madill Public Schools -- A complaint was filed because no special education classes served grades K-2 and no 7-12 EMR were being served. OCR found no violation. How can EMH be served only during grades 3-6 such that all these children can be placed in regular classroom for grades 7-12?

Steele, Billy v. Beggs Public Schools -- complaint filed August 1979. OCR would not investigate. A second complaint filed May 1980. OCR has attempted to force withdrawal of the complaint because the child graduated. OCR states that lack of reading skills is not a handicap; however, the child was never evaluated to discover the reason for his not reading.

Blackwell v. Gore Public Schools -- Investigation has been postponed twice.

O'Dell v. Perkins-Tryon Public Schools -- Eugene O'Dell was expelled from school September 1978. He was kept at home, at the request of the school, with no program for 15 months. December 1979, the school set up a home-based program. In early 1980, he was adjudicated delinquent and made a ward of the state and has been placed at the Enid State School, a 24-hour residential facility. OCR found no violation, will not address the fact that the child was out of school for 15 months.

Beggs Public School -- complaint by nine parents. Cited with several violations August 1979. Request for reinvestigation November 1979. Little has been done. The same children are still faced with the same situation. No enforcement.

Smith v. Tulsa Public Schools -- School district last evaluated the child in 1972. Child is emotionally disturbed. No effort made to place the child properly. Parents finally in desperation and frustration, as the situation worsened, removed the child from school and placed at Timberlawn in Dallas, where he has made much progress. Parents have made request that the school help defray expenses School claims it cannot because 1) the child is out-of-state and 2) if the parents had come to them first, they would have been glad to help. But this situation had gone on for years, with no help forthcoming. OCR is now investigating.

Baker v. Butler Public Schools -- OCR would not investigate because a due process hearing had been called. (Although later a policy from Washington stated that an investigation could be done while due process hearing pending). School refused to educate child. Filed suit in federal district court; the new superintendent initiated a special education program.

Durbin v. Mustang Public Schools -- school found in violation, but refused to do anything. OCR had private conversation with school officials without parental knowledge. Mother withdrew child from school. OCR then stated it could not do anything because the parent had removed the child from public school.

Faith 7 (Shawnee Public Schools) -- an isolated facility. OCR complaint filed October 22, 1979. The decision was rendered June 24, 1980, eight months later.

This office has filed 85 OCR complaints since March 1979; ten of these were filed in May, 1980.

This is a sample of the problems we are having here in Oklahoma. I am sure Oklahoma is not unique. If the subcommittee wishes further cases and documentation, we will be glad to furnish whatever is necessary. If our handicapped children are to receive the education which they deserve and are entitled to by law, these laws must be enforced. Something has to be done to make these laws more than just pretty words on paper; they must be effective.

Prepared by: Vicki L. Williams
Staff Attorney

Vicki L. Williams

JAN 05 1980

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24 December 1980

Chairperson Paul Simon
House of Representatives
Committee on Education and Labor
Subcommittee on Select Education
Room 320, Cannon House Office Building
Washington, D.C. 20515

Dear Chairperson Simon:

Thank you for your kind letter in regard to my testimony before the Committee on November 20, 1980. I did, however, want to provide you with a brief update on certain events which have bearing on that testimony and which have occurred since that date.

A major portion of my written and oral statement involved what I then believed was an encouraging sign that the Office of Special Education was cooperating with the Office for Civil Rights in an effort to resolve complaints filed by my office, the Education Law Center, Inc., in late 1979. Those state-wide administrative complaints focused on Pennsylvania's statutory ceiling on tuition reimbursement for handicapped youngsters who are placed in approved private schools by their local school districts, with Pennsylvania's Department of Education approval. The statutory maximum has two effects. For youngsters whose parents have sufficient resources to pay the difference between the maximum and the actual cost, it is denying appropriate education programs which are "free." For others who cannot pay the difference and who have no other adequate private or public alternative, it is denying education programs which are "appropriate."*

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*Since March, 1980, this matter has also been the subject of a state-wide class action, Gittelman v. Scanlon, now pending in U.S. District Court for the Eastern District of Pennsylvania.

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Paul L. Tractenberg
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Director:
Marilyn J. Morheuser

In April, 1980, OCR ruled on the complaint which was within its jurisdiction, and determined that Pennsylvania was in violation of §504 of The Rehabilitation Act of 1973. When Pennsylvania failed to bring itself into compliance, the matter was referred to the central office for enforcement where, to our knowledge, it is still pending. Finally, on October 10, 1980, shortly before my testimony, OSE contacted Pennsylvania and told the state that it would not approve the proposed plan for future P.L. 94-142 funding until it received assurances that the problem was cleared up.

On October 30, 1980, unbeknownst to us, Dr. Makuch, Director of Pennsylvania's Bureau of Special Education, sent a letter to OSE which provided in pertinent part as follows:

> Concern #1: A free appropriate public education for handicapped children (under both Part B and Section 1376, Act 11, Pennsylvania Public School Code) will be provided if the only appropriate placement available is at a facility which charges a rate above the limitation contained in Act 11.
>
> Policy: The SEA will assure the provision of a free appropriate public education for handicapped children even if the only appropriate placement available is at a facility which charges a rate above the limitation contained in Act 11.
>
> The SEA assures that all LEAs will have monies available for all exceptional students whose evaluation, individual education plan and program had to be an APS placement where the facility charges a rate which exceeds the limitation in Act 11 for a program of special education.

(See Attachment "A" for full text of this letter).

Based on this "assurance," without requiring a plan for how it is to be carried out or any indication that it is being carried out, the Pennsylvania Plan was approved; despite prior promises to the contrary, there was no notice or discussion of the assurance or the proposed action with this office, and OSE sought no information from us on the status of the children and parents who were the subject of the complaint. A letter to Mr. Tyrell of OSE, discussing the flaws in these proceedings and setting out the minimum parameters for meaningful resolution of this problem, was sent on December 29, 1980. A copy of that letter is enclosed as Attachment "B".

This action by OSE belies any real intent on the part of that agency to enforce meaningfully P.L. 94-142; should OCR follow suit, its action would also cast doubt on the intentions of that agency. If the "cooperation" agreement between OCR and OSE set out in the Secretary of Education's Task Force Report becomes a means by which these agencies can uniformly and consistently sidestep their enforcement obligations under §504 and P.L. 94-142, rather than a means by which meaningful enforcement can be obtained, the Task Force may unintentionally result in children's rights under these acts becoming even more difficult to achieve.

Again, ELC is grateful for the opportunity to discuss these matters with your Committee. I would appreciate it if this letter could be included with my testimony of November 20, 1980 when it is published.

Very truly yours,

JANET F. STOTLAND
Managing Attorney
Pennsylvania Office

JFS:smo
Attachments

cc: Dr. Gary J. Makuch
John Alzamora, Esq.
Cynthia Brown, Esq.
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December 29, 1980

Mr. William D. Tyrrell
Acting Chief
Field Services Branch
Office of Special Education
U.S. Department of Education
Washington, D.C. 20202

Dear Mr. Tyrrell:

I recently requested and received a copy of a letter to you, dated October 30, 1980, from Dr. Gary J. Makuch, Chief, Pennsylvania's Bureau of Special Education. That letter contained "amendments" to Pennsylvania's Triennial State Program Plan which I understand were deemed a sufficient response to your letter of October 20, 1980 to warrant the Office of Special Education's (OSE) approval of the Plan. I write to protest OSE's handling of this matter and its approval of the Plan based on the vague assurances contained in Dr. Makuch's letter. It is the Education Law Center's position that the situation described in our administrative complaint of December, 1979 continues to exist and that Pennsylvania continues to deny some of its handicapped residents access to free appropriate public educations.

As you know, Pennsylvania has a statute which appears, and has previously been interpreted by the State, to limit to an absolute dollar amount the expenditure which may be made to cover the costs of a handicapped child's placement at a private school.* [24 P.S. §13-1376(a)]. This statutory maximum has historically had two effects. For youngsters whose parents have sufficient resources to pay the difference between the maximum and the actual costs of an education program

---

*In Pennsylvania, private school placements are initiated by the local school district only when no appropriate public placement is available, and are approved by the Department of Education. The Department then pays 80% of the tuition, up to the statutory maximum, and the local school district the remaining 20%. A copy of the statutory language in question is enclosed.

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at an approved private school, the statute denies appropriate educations which are free. For those whose parents cannot pay the difference, and who have no access to other adequate private or public alternatives, the statute denies education programs which are appropriate. In both cases, the statute violates handicapped children's rights under P.L. 94-142.

While approved private schools in Pennsylvania are prohibited by state law from collecting payments from parents, the law has not been vigorously enforced by Pennsylvania in the past. Recently, largely in response to the administrative complaints and lawsuit initiated by this office, Pennsylvania has begun to respond to complaints regarding charges. However, given the actual cost of providing special education programs and in some cases maintenance to these severely impaired youngsters, these enforcement actions have resulted in the actual or threatened exclusion of Pennsylvania residents from Pennsylvania approved private schools.

Your letter of October 20, 1980 to Dr. Makuch required that Plan amendments be submitted which specified in detail the policies and procedures to be followed to assure that the problems created by Pennsylvania's statutory maximum are corrected. Despite this demand for specificity, the response presented by Dr. Makuch in his October 30, 1980 letter is essentially contained in one paragraph. After a general assurance that free appropriate public educations will be provided, the letter states

> The SEA assures that all LEAs will have monies available for all exceptional students...where the facility charges a rate above the limitation contained [in state law].

Nowhere does the State propose or set out any plan for implementation of this assurance or even indicate how it will assure that the "monies available" to LEAs will be expended for this purpose.

From Dr. Makuch's letter, it appears that the State is interpreting the statutory maximum to impose a funding limitation only on the SEA, and not on an LEA. In fact, it appears that the SEA is suggesting that LEAs have both the authority and the obligation to reimburse private schools for the difference between the statutory maximum and the actual cost of tuition and maintenance. The wording of the statute itself seems to preclude this interpretation and, as is discussed below, the SEA's legal basis for this position and a plan for its implementation have not been provided by Dr. Makuch. If this interpretation of the Plan "amendment" is correct, it represents a dramatic departure from past understandings and practices in Pennsylvania, a change which cannot be implemented effectively without careful planning, notice to LEAs, and SEA enforcement procedures.*

Over the past four years, ELC staff have had extensive experience with the SEA and LEAs regarding handicapped children whose approved private school placements were prevented or jeopardized by the statutory maximum. Only in two instances, both of which occurred in recent months, has the issue of LEA responsibility for payment of excess costs been raised. Our experiences in both cases, neither of which has been resolved as of this time, are illustrative of the types of problems which must be resolved before an LEA-financed solution to the statutory maximum problem is possible.

In one instance, the LEA has been trying to place a severely impaired child in an appropriate private school for almost a year and a half. In October, 1980, a school was found, and in early December, 1980, Pennsylvania Department of Education approval for funding up to the maximum -- $10,500 per year -- was obtained; the tuition and maintenance charges of the private school are approximately $21,000. Accordingly, the private school has insisted that either the LEA or SEA execute a contract for the costs above the maximum.

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*That this proposal is indeed a change from present practice is clear. In August of 1980, Dr. Makuch was deposed by attorneys from ELC incident to the Gittelman v. Scanlon litigation (C.A. No. 80-1034). Dr. Makuch admitted that as of that date the SEA had never had occasion to notify any LEA in Pennsylvania of its authority or its obligation to pay costs in excess of the statutory maximum.

The LEA was then orally instructed by the SEA to pay the difference out of funds previously distributed to it, although the funds were already committed to providing other services. The LEA is willing to make payment, but has been unable to obtain the written confirmation of these instructions from the Department which is a pre-condition to such payment.

Moreover, as is the case with many if not all other LEAs in Pennsylvania, this LEA cannot sign a contract with the approved private school without first obtaining authorization from its governing board. This additional impediment raises both confidentiality problems (given Pennsylvania's "Sunshine law") and the possibility of the Board's refusing to approve the contract. Should the Board deny authorization, this child will be left without an appropriate educational program after almost one and a half years of effort. This scenario also presents the questionable practice of having a School Board, unfamiliar with the individual needs of the child, making the placement decision.

The second experience is even more alarming. This child was placed, with LEA and SEA approval, in an out-of-state facility with tuition and maintenance charges more than $11,000 over the statutory maximum. The SEA instructed the LEA to pay the difference, but the LEA refused, citing to the language of the statute. ELC staff have been unable to secure a written committment from the SEA that it will assure payment. In the interim, the arrearages continue to accumulate and the private school may move to disenroll the child at any time.*

Had OSE, as promised, shared Dr. Makuch's proposed plan with the ELC staff who represent the original complainants, problems such as these could have been addressed at a time prior to OSE's approval of the Pennsylvania Triennial Program Plan. The lack of any detailed procedure, existing or proposed, by the state of Pennsylvania makes it highly unlikely that these problems will be addressed or resolved in the near future.

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*It is important to note that while the SEA automatically withholds from an LEA's annual appropriation the 20% share of private school placements costs up to the statutory maximum, it has not proposed to withhold the costs in excess of that amount. This omission almost guarantees that the kinds of problems described above will occur.

In the interim, the violations of the rights of handicapped children described in ELC's administrative complaint continue. OSE's retrenchment from its original position and its approval of the Pennsylvania Plan is extremely disappointing and fails to live up to the promise of vigorous enforcement that seemed present in the fall of this year.

I enclose for your information a letter to Representative Paul Simon, Chairperson of the House Committee on Education and Labor Subcommittee on Select Education, expressing our dissatisfaction with the manner in which OSE has proceeded in this matter and with the present result. I urge OSE to require of the Pennsylvania Department of Education the detailed policies and procedures originally requested and to give ELC staff an opportunity to comment on the Department's submission prior to any action by OSE. Without such additional response, OSE will have failed in its obligation to the handicapped children of Pennsylvania. Please inform me of the action which you or other OSE personnel intend to take in response to this letter.

Thank you for your prompt attention to this matter.

Very truly yours,

Caryl Andrea Oberman

CARYL ANDREA OBERMAN, ESQ.

CAO:smo
cc: Representative Paul Simon
Edwin W. Martin
Ed Sontag
Jerry Vlasak
Cynthia Brown, Esq.
Dr. Gary J. Makuch
John Alzamora, Esq.
David Kraut, Esq.

UNITED SERVICES FOR AUTISTIC
416 S. MONROE, HINSDALE, ILLINOIS 60521—(312) 323-4636

Draft.

A BLUEPRINT FOR THE LIVES OF OUR CHILDREN

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Purpose - To bring into being a plan which will implement the mandated laws which now exist to provide services for the developmentally disabled, from 0 to death, particularly the autistic, or individuals suffering from communication and behavior disorders. The grant will demonstrate that the philosophy and intent of the federal government can be executed by resources within the community, and that it is economically feasible, practical, and beneficial, not only to the autistic, but to the community as a whole.

By the experience of the past six years, we are convinced that organizations that are the products of the past are not organizationally equipped to develop programs with newly mandated agencies so that they are interlocking and designed to support each other to create comprehensive services.*

We also feel that any services to the autistic, if not part of an overall life plan, i.e., not related to a design to bring about services from one phase of life to another, will unfortunately become a tragic waste of effort.

* Footnote: As the recent Sears class action indicates, the challenge will come from local governments that all these laws are inoperable.

As a parent group, we feel that we can become a catalyst in bringing together the necessary resources to formulate a blueprint for our children's lives.

The following is a systems approach towards the problems of our children; the design is one of dynamic utilization of resources and intentionally disregards bureaucratic and administrative obstacles to the execution of this program. It is inherent in this grant to work only with these administrators who are prepared to bring about a system that does not force our children to accommodate the limitations of obsolete administrative regulations that do not meet the needs of our population, but to develop a system that is truly designed for our children—for now and for their entire lives. We feel that the demonstration grant proposed must be funded and become a clear example to all other communities in America, that the law of the land is not an ideal that will, in practice, never be, but an ideal whose time has come.

The needs of our population will fall into three categories:

- 0-21 Public Education
- The Family Unit
- Lifelong Adult Care

Each category is an integral part of developing a lifelong program for the autistic; any attempt to plan for one component without assuming responsibility for the other would bring about failure for any of the programs.

Public Education Component

Objectives:

1. Prepare an autistic individual for an adult life.
2. Develop their potential to its limits.
3. Bring about a public awareness of our problem and have the community adapt, where possible, to their needs.

4. Facilitate the transitional adjustment for the individual to move from the natural home to residential programs.
5. Contribute to the overall body of information about autistic children.

Note: The design as proposed is not rigid and final, but is intended to introduce unorthodox concepts, and new methods of dealing with problems that heretofore have not been considered.

Program Design:

The program design is one of multi-faceted disciplines utilizing all resources which have been successful in working with autistic children. It is designed to have an open enrollment so that the IEP can be flexible and offer numerous options to tailor a program for a particular child. It will also insure that the child is maintained within the special education cooperative legally responsible for the education of that child.

Each cooperative would establish a building site where all autistic children within that given area would be delivered to school. The home base teacher, with support from the demonstration program, would be responsible for the child's IEP and the eventual implementation of the program. The program would be broken down into three basic therapy time tracks (see chart).

The function of the home base teacher would be to mainstream the child as much as possible with the other children through lunch and recess activities. The home base teacher would help the families in becoming part of the local PTA and assisting these parents in taking part in the normal school activities and gaining acceptance and support from the school population as a whole.

Besides the above, the intent of the home base is to bring the child from home to school in the shortest distance, using local bus service. Once the child is at school, he is now within the structure of the program. Mobility and transport of the child to other locations will be used to:

1. bring the child to an appropriate age group, and
2. bring the child to a site where he would receive specialized therapeutic treatment to meet the goals specified in his IEP.

Staff:

Most home base teachers will serve in dual roles:

1. orchestrating the program for each child, and
2. working with the individual parents.

They will also serve in the role of specialist as befits their background with children directed to them for specialized treatment (see chart).

Three Basic Therapy Time Tracks:

Each track will be of one hour and forty-five minutes' duration, with half an hour allowed for transportation between sites. The half hour transportation slots are in themselves an integral part of the therapeutic program because the transportation vehicle will serve as a learning module.

For example, a child will arrive at the home base; later during the learning track he will be transported via the internal transport system to a prescribed site for specific therapy, such as play therapy, etc.

The mobile learning module which will transport children from one site to another, would have assigned to it a teacher or aide who would use the time spent in transport to interact with the children in a constructive way. The mobile learning module would have in the rear a learning pod, which would be insulated to provide for a learning environment. The entire system would be connected by radio system for immediate communication between drivers and staff members.

Besides transporting students, the vans would be used to transport teachers and staff specialists between sites. This would provide maximum flexibility and utilization of each staff member.

Schedule:

Besides the normal home base responsibility, each teacher would work on task within two tracks each day. One track would be used to do program planning, research and communicating with other teachers.

We believe that more attention must be given to the best resource we have in working with our children, i.e., the trained professional. The design of the program is intended to prevent the teacher from stagnating with one constant population and brings many professionals into the involvement of a child's program. The teacher can enjoy the stimulation of working with several populations during the week; this not only broadens their knowledge of autism, but makes them part of a "team effort" to develop the child's potential.

To help sustain the interest, the Family Resource Center (which we will discuss later) would serve as a parent agency to reward teachers and grant them the recognition and appreciation that only a parent can give.

The attached chart shows that in the three tracks we must:

1. divide the population into four basic age groups;
2. select from a menu of treatment options;
3. plan a weekly schedule to orchestrate the services being offered.

Extended Day: - 12 months school year.

As can be noted in the chart, the program will run from 9 a.m. 'til 4:30 p.m. Recreational therapy, which all autistic children benefit from, would become part of the school day. It is proposed that the home base teacher, with the support of recreational specialists, use normal community recreation sites such as ice rinks, bowling alleys, etc., to give the child the necessary experiences for these activities. We feel it is better to program during the school day when these facilities are not monopolized by normal children.

Tax revenues allocated for recreational purposes should be re-directed to the schools to provide these services.

FAMILY RESOURCE CENTER: { INTERLOCKS
BLENDS INTO
SCHOOL
PROGRAM

We feel that because of United Services for the Autistic's successes in bringing about community-based services in the western suburbs, in this area we have probably developed more involvement in autism than in any other area in the U. S. To protect this investment and to continue to develop services, this operation should be systematized and become a permanent institution in our community. Therefore it is the Family Resource Center which would be the connecting link between the early stages of the child's education and the intermediate phase of maintaining family involvement at all times and would become the architects for planning the autistic individual's adult life style and maintenance for their entire lives (see chart).

It is therefore essential that the educational component work with the Family Resource Center as a site for family training. We submit that this would become a reciprocal learning experience for both professionals and families.

The Family Resource Center
Asserting Family Life

The core to the entire program design is to reassert the role of parents as it pertains to the total process of caring for an autistic individual. The failure of the past 20 years to bring about services that are humane and something that society can be proud of is directly due to the erroneous notion that government and professionals can become the parents of this forsaken population. It has been the insidious process of benign institutions and social scientists, borne out of the psychogenic rationale, to relieve parents of responsibilities for their children. It is this process of insisting on the capitulation of the child to the system for total care at astronomical cost which has resulted in the disenfranchisement and alienation of parents and other family members. Without the help of parents and family members in sharing the problem, the state is presented with an impossible situation and a "no-win" program of caring for the mentally ill and autistic. Due to the inability of communities to bring about the appropriate services for families living with an autistic child, it is simply a race of time before that family collapses under the strain and surrenders to "big brother" to care for their child again. We submit it has been this process, as stated above, of doing things to and ~~for families~~ (Not with) that has, in turn, brought about hostility and bitterness towards the system. No matter how well-intentioned and how good the professional who assumes the role of caring for the child, that person will inevitably become the recipient of all this frustration and hostility. Because for good or bad, all parents by natural instinct have a need to provide for their offspring, whatever their disabilities. To take this away for any reason becomes a greater tragedy and problem to the process than the actual remediation of the child's disease. We have now made it a total social problem.

The best way to rid a parent of guilt is to allow that person to become a parent in every way he chooses. Rather than take over, it is far better to help by giving all that a society rich in technological resources can provide.

Design

The Family Resource Center would provide a site for family activities—social, educational, psychological, and religious. Its objectives would be to maintain the child in the home and community. To achieve this we would initiate, out of this site in conjunction with the school programs, family training, support services such as homemaker's care, self-help programs from other families, help for parents in conjunction with the staff from the public school and Illinois Institute of Developmental Disabilities, training in teaching basic skills in self-help areas. The Center would also conduct group meetings to discuss treatment options and new research into areas of diet, allergies and megavitamin therapy. These meetings will be conducted by parents and free of professional biases.

The Center, with the cooperation of the Crescent Police Academy and Suburban Fire Protection League and their paramedic units, would set up a training program for local community constabularies to:

1. identify autistic children in their areas, and
2. know how to bring help and support for families with an autistic child in danger, and
3. work with the Family Resource Center as the need arises.

In addition, the Center would develop incentive programs to enrich and reward all people working with our children. This would be an essential part of the Center's responsibilities. It would also serve as a repository and library for information on autism.

Socialization:

The Center would serve as an extended family, would become a home and refuge for families to have contact. During the year social events would be planned at the site.

The Summer Family Institute, which is a component of this concept, would be brought under the umbrella of the FRC and would become part of this grant. It can be expanded to serve more children using community-based colleges, as well as the University of Illinois, for staff membership. We also propose that Illinois Institute of Developmental Disabilities directly contribute toward this program.

The FRC would have, as part of its physical plant, a cottage facility for short overnight stays to be used for intensive therapy. If needed, a child from the public school program may stay there with his family overnight to deal with severe behavior problems or basic living skills. Access to this facility would be provided to the public schools and IIDD.

Religious Component

The Union Church of Hinsdale has indicated strong interest in working with this program in providing religious and psychological help to all families that desire it. They would provide a non-sectarian ministry which would work with the appropriate churches of the clients to bring about a central experience that is meaningful and relevant for all clients involved.

By utilizing the community church, such as the Union Church, we create a normalcy and bring about a community awareness for our children and their problems which cannot be achieved through members of individual churches. We think this is most essential to the growth and development of our siblings in feeling better about themselves.

We have confidence that the Union Church will bring about an effective ministry for our purposes.

Patterns of Living, Service and Research

ADULT PLANING.

Cottage units for overnight living purposes are part of the program, so that by a systematic approach of helping our autistic children and families to learn to live apart and secure independent living skills, we can schedule for families on a regular weekend basis. This would provide valuable research information into analyzing population patterns best suited to live together in a group home. We as parents are quite concerned about the appropriate population mix for our children and what would be the best model for their adult lives. If the group home is to succeed, serious research into this area must be done, otherwise we can create a nightmare more serious than the one we are trying to get out of.

The establishment of a group home is the consummation of a marriage of many families into an intense living situation. The Center would provide an engagement period so that the most compatible children and families can be brought together.

A home is made up of people who love and understand each other. Not to put that ingredient into adult homes would be nothing more than creating institutions in small residences.

Architectural and Site Design

Under the adult care component, a research study for site locations and appropriate architectural design for group home living should be made with professionals and parents alike. Within the three-year span, the first model or two should be started as part of this demonstration project. Family members of usA are architects and building contractors who can help in this area. This planning will be done with specific individuals in mind, as opposed to the present method of planning for a statistical population.

Personnal - Research and Design

The Family Resource Center will serve as an excellent laboratory for a transitional period which the state of Illinois can use in designing and developing career programs for group homes. As part of the three-year proposal, the adult care component would be designed, utilizing the families, population and staff working at the Resource Center level.

The FRC would help design a psychological profile and aptitude test for staff to work in group homes. It would search the community to recruit and find the resources to work with the population. It would address itself to the problem of elevating careers for those people who choose to work with our population at the treatment worker/aide level.

The FRC would serve as a laboratory to interact with universities, IIDD and career people and staff professionals working with our children to develop competency in the area of autism. It should also deal with the dynamics of working with families in harmony and not in an adversary relationship, which is now often the case.

We feel that the root of this problem is that the expectations of our parents are greater than the competency that now exists in the field. This program would provide an excellent opportunity for IIDD to study this problem.

Respite and Crisis Programs

We have intentionally left this to the last because we believe that the need for respite is now treated under a crisis situation that is the by-product of poor community services and the absence of the extended family, as provided by usA and the FRC. Once the above program is in operation, respite, as now conceived as a trauma situation, would be dramatically changed. We do not subscribe to the stockade mentality of respite as now designed. As a tragedy hits a family, the child is abruptly transposed from the natural home to an institutional setting. This facility has no prior knowledge of the child and the staff are strangers to the child and his problems.

Such respite programs only repeat the past and serve as the preamble to eventual institutionalization, as demonstrated by other well-intended respite programs, because none of the dynamics of the problem have changed.

Because we are parents who will not only love the children in the program, but will know them and their problems, a crisis in the family would be handled in the most natural and orderly way. The FRC would assume care and responsibility for the child during the crisis period as would a natural family. We also submit that because we are providing systematic respite for weekends and other short-term living experiences, we will prevent many of the family breakdowns caused by the inability of the family to cope with the problems of the autistic child. The FRC will extend love, security and protection throughout the year and the children will always have the protection of other parents caring for their welfare.

In accordance with the above, the FRC would provide services during Christmas and Easter vacations. The problems of autism never take a vacation; families must be provided with support and help during these times.

Long-Term Guardianship

In closing, we must face the reality that the end will come for all parents and that we will not have the joy of seeing the implementation of this dream in our adult years. The purpose of usA is to create a fraternity of siblings to deal with each other's problems. We also look to them to assume the role of guardianship for their brothers and sisters. It is not a burden for a sibling to grow up in a world, knowing that his/her brother or sister is well-cared for; it would be a much greater burden for them to live in a world not knowing or able to care for the needs of their autistic siblings. We are our brother's keepers.

Summary of Benefits

- Reduces number of responsible agencies to three — public education; private, such as Ray Graham Association and usA; and IIDD.
- Prevents duplication of services
- Maximizes options for therapy
- Mainstreams population into all levels of community life
- Deinstitutionalizes and reverts trend back to old-fashioned family values, in conjunction with modern professional support services.

The grant will show the feasibility, the economic savings and the improvement as it pertains to the humane sense.

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